

ESTTA Tracking number: **ESTTA475112**

Filing date: **05/29/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92046185
Party	Defendant Pro Football, Inc.
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Signature	/Robert L. Raskopf/
Date	05/29/2012
Attachments	Appendix part 24_Butters Depositions.pdf ( 105 pages )(2153411 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

In re Registration No. 1,606,810 (REDSKINETTES)  
Registered July 17, 1990,

Registration No. 1,085,092 (REDSKINS)  
Registered February 7, 1978,

Registration No. 987,127 (THE REDSKINS & DESIGN)  
Registered June 25, 1974,

Registration No. 986,668 (WASHINGTON REDSKINS & DESIGN)  
Registered June 18, 1974,

Registration No. 978,824 (WASHINGTON REDSKINS)  
Registered February 12, 1974,

and Registration No. 836,122 (THE REDSKINS—STYLIZED LETTERS)  
Registered September 26, 1967

Amanda Blackhorse, Marcus Briggs,	)	Cancellation No. 92/046,185
Phillip Gover, Jillian Papan, and	)	
Courtney Tsotigh,	)	
	)	
Petitioners,	)	
	)	
v.	)	
	)	
Pro-Football, Inc.,	)	
	)	
<u>Registrant.</u>	)	

**DEPOSITION TRANSCRIPTS OF RONALD R. BUTTERS, DEC. 20, 1996 & APRIL 10,  
1997**

**PART 24**

Respectfully Submitted,

/s/ Robert L. Raskopf

Robert L. Raskopf

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**In The Matter Of:**

*SUSAN SHOWN HARJO, RAYMOND D. APODACA v.  
PRO-FOOTBALL, INC.*

---

*RONALD R. BUTTERS  
December 20, 1996*

---

*DAVID FELDMAN & ASSOCIATES  
216 EAST 45TH STREET, 8TH FLOOR  
NEW YORK, NY 10017-3304  
(212) 986-4545*

*Original File rb122096.v1, 180 Pages  
Min-U-Script® File ID: 1072001510*

**Word Index included with this Min-U-Script®**

Page 1

[1]  
[2] IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
[3] BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD  
[4] -----X  
[5] SUSAN SHOWN HARJO, RAYMOND D. APODACA,  
[6] VINE DELORIA, JR., NORBERT S. HILL, JR.,  
[7] MATEO ROMERO, WILLIAM A. MEANS, and  
[8] MANLEY A. BEGAY, JR., Cancellation  
[9] Petitioners, No. 21,069  
[10] - against-  
[11] PRO-FOOTBALL, INC.,  
[12] Respondent.  
[13] -----X  
[14]  
[15] December 20, 1996  
[16] 9:15 a.m.  
[17]  
[18] Deposition of RONALD R. BUTTERS,  
[19] held at the offices of Dorsey & Whitney  
[20] LLP, 250 Park Avenue, New York, New York,  
[21] pursuant to Subpoena, before TAMI H.  
[22] TAKAHASHI, RPR and a Notary Public of the  
[23] State of New York.  
[24]  
[25]

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[1]  
[2] APPEARANCES:  
[3]  
[4] DORSEY & WHITNEY LLP  
[5] Attorneys for Petitioners  
[6] 250 Park Avenue  
[7] New York, New York 10177  
[8] BY: STUART D. AARON, ESQ.  
[9]  
[10] WHITE & CASE  
[11] Attorneys for Respondent  
[12] 1155 Avenue of the Americas  
[13] New York, New York 10036-2787  
[14] BY: NADINE P. FLYNN, ESQ.,  
[15] - and -  
[16] CLAUDIA T. BOGDANOS, ESQ.  
[17]  
[18]  
[19]  
[20]  
[21]  
[22]  
[23]  
[24]  
[25]

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[1]  
[2] IT IS HEREBY STIPULATED AND AGREED,  
[3] by and between the attorneys for the  
[4] respective parties herein, that filing and  
[5] sealing be and the same are hereby waived.  
[6] IT IS FURTHER STIPULATED AND AGREED  
[7] that all objections, except as to the form  
[8] of the question, shall be reserved to the  
[9] time of the trial.  
[10] IT IS FURTHER STIPULATED AND AGREED  
[11] that the within deposition may be sworn to  
[12] and signed before any officer authorized to  
[13] administer an oath, with the same force and  
[14] effect as if signed and sworn to before the  
[15] Court.  
[16]  
[17]  
[18]  
[19]  
[20]  
[21]  
[22]  
[23]  
[24]  
[25]

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[1]  
[2] RONALD R. BUTTERS, called as a  
[3] witness, having been duly sworn by a Notary  
[4] Public, was examined and testified as  
[5] follows:  
[6] EXAMINATION BY  
[7] MR. AARON:  
[8] Q: Good morning, Professor Butters. My  
[9] name is Stuart Aaron. I'm an attorney with the  
[10] law firm of Dorsey & Whitney and we're  
[11] representing the petitioners in the matter, Harjo  
[12] against Pro-Football, Inc.  
[13] This morning and perhaps into this  
[14] afternoon, I'll be asking you some questions. If  
[15] at any time you don't understand a question,  
[16] please let me know, I'll be happy to rephrase  
[17] it. If you'd like to take a break, as we  
[18] discussed prior to starting, just let me know and  
[19] I'll be happy to accommodate you, if you want to  
[20] consult with your counsel, whatever. Is that  
[21] acceptable to you?  
[22] A: Certainly.  
[23] Q: Okay. Professor Butters, have you had  
[24] your deposition taken before?  
[25] A: Yes.

Page 5

**Butters**

- [1]  
[2] **Q:** On how many occasions?  
[3] **A:** I'd have to look at my CV, but -  
[4] approximately or do you want the exact number?  
[5] **Q:** Why don't you tell me approximately.  
[6] **A:** Approximately 10.  
[7] **Q:** I will have your CV marked in a  
[8] moment. What subject areas did those matters  
[9] fall within, if you can categorize them?  
[10] **A:** They're all within the framework of  
[11] linguistics.  
[12] **Q:** Okay. And, as far as the area of law  
[13] of the matters in which you testified, can they  
[14] be categorized?  
[15] **A:** Yes.  
[16] **Q:** How would they be categorized?  
[17] **A:** Let's see. Well, for example, one  
[18] case involved the interpretation of one key word  
[19] in a fishing rights treaty that was negotiated in  
[20] the 1840s between the United States government  
[21] and some Indian tribes in the Northwest. The  
[22] word was shellfish. And the dispute was hinged  
[23] on whether shellfish were considered fish in the  
[24] 1840s. And my testimony involved that, some  
[25] historical work on the usage of the term

Page 6

**Butters**

- [1] shellfish in the earlier 19th century.  
[2] I have similar cases involving the  
[3] wording of statutes. Again, if you'd like me to  
[4] look at my CV and refresh my memory, I can tell  
[5] you what the cases were.  
[6] **MR. AARON:** Why don't we have marked  
[7] as Butters Exhibit 1 a copy of the  
[8] curriculum vitae for Professor Butters that  
[9] consists of nine pages.  
[10] (Butters Exhibit 1, CV of Professor  
[11] Butters, marked for identification, as of  
[12] this date.)  
[13] **Q:** Professor Butters, you've been handed  
[14] what's been marked as Butters Exhibit 1. Could  
[15] you identify that document, please?  
[16] **A:** This is my CV as of May 1996.  
[17] **Q:** And looking at your CV, can you  
[18] provide some further explanation with respect to  
[19] the matters in which you provided deposition  
[20] testimony in the past?  
[21] **A:** In 1994, the Darby, Peele, Bowdoin, et  
[22] cetera, the Lake City, Florida case involved the  
[23] interpretation of a statute, the Florida  
[24] statute. Did you want the particulars of that?  
[25]

Page 7

**Butters**

- [1]  
[2] **Q:** That's enough to tell. Thank you. I  
[3] notice, in 1993, Death Penalty Resources Center.  
[4] What was your retention in that matter  
[5] concerning?  
[6] **A:** There had been several death penalty  
[7] cases that I've looked at. In almost all of  
[8] these cases, what we were looking at was the  
[9] transcripts of the voir dire or the - some  
[10] aspects of the trial themselves. And in these  
[11] cases, we were looking for evidence of racial  
[12] discrimination.  
[13] **Q:** Have you provided deposition testimony  
[14] in any other trademark proceedings?  
[15] **A:** I'm trying to remember whether there  
[16] was deposition - I did testify in a trial in  
[17] 1993 or 1994 in Richmond having to do with -  
[18] gee, I'm blocking on it. Just give me a second  
[19] to collect my thoughts.  
[20] The dispute had to do with the  
[21] similarity or difference between the marks Carmax  
[22] and Car-X. Carmax is a chain of secondhand  
[23] automobile dealerships that is being begun in the  
[24] South and Car-X is a chain of muffler repair/oil  
[25] changing companies. That's - I think that's the

Page 8

**Butters**

- [1] only case I've testified in that involved  
[2] trademark or copyright.  
[3] **Q:** And that was in federal court in  
[4] Virginia?  
[5] **A:** Yes.  
[6] **Q:** And you don't remember whether that  
[7] was deposition testimony or trial testimony?  
[8] **A:** That - it definitely was trial  
[9] testimony. And I did also prepare a report ahead  
[10] of time, but there was no - oh, yes, and there  
[11] was also a deposition as well. How could I  
[12] forget? All day.  
[13] **Q:** Okay. Other than that experience  
[14] testifying in court, have you testified in court  
[15] before?  
[16] **A:** Yes.  
[17] **Q:** On how many occasions?  
[18] **A:** Well, again, I said 10 before. I  
[19] think probably there might be a total of a dozen  
[20] cases in which I did either or - and/or.  
[21] **Q:** Where are you presently employed?  
[22] **A:** At Duke University.  
[23] **Q:** And in what position?  
[24] **A:** I'm a professor of English.  
[25]

Page 9

**Butters**

- [1]  
[2] **Q:** And you've been affiliated with Duke  
[3] going back to 1967, based upon your CV?  
[4] **A:** That is correct.  
[5] **Q:** And in your capacity as professor of  
[6] English at Duke University, I assume you lecture  
[7] students -  
[8] **A:** That's correct.  
[9] **Q:** - in part? And what else do you do  
[10] in the course of your employment at Duke?  
[11] **A:** Well, I've done a great deal of  
[12] administrative work. I've done all the jobs in  
[13] the English department administration except  
[14] director of graduate studies. I was acting  
[15] chairman, I was director of undergraduate studies  
[16] and supervisor of freshman instruction and  
[17] associate chairman of the department. I was  
[18] never director of graduates.  
[19] **Q:** As it relates to the field of  
[20] linguistics, what do you do in addition to  
[21] lecturing students?  
[22] **A:** I also co-chair the program in  
[23] linguistics, teach courses in - almost all of my  
[24] teaching is linguistics. I get one introductory  
[25] literature course as often as I can because it's

Page 10

**Butters**

- [1] really fun.  
[2] **Q:** And you do some writing?  
[3] **A:** Oh, yes. My writing is almost  
[4] entirely in the field of linguistics.  
[5] **Q:** Okay. And, I take it, attached to  
[6] your CV or as part of your CV is a listing of the  
[7] various writings that you've done over the years?  
[8] **A:** Yes. I should also - although it's  
[9] in the CV, you might be interested also in the  
[10] work that I've done for the American Dialect  
[11] Society since the early 1980s as editor of the  
[12] Journal of American Speech. I'm currently the  
[13] chief editor of American Dialect Society  
[14] publications which puts me in a supervisory  
[15] capacity for both the Journal of American Speech  
[16] and the monograph series which is called  
[17] Publication of the American Dialect Society.  
[18] **Q:** And how would you describe the  
[19] American Dialect Society? What is that society?  
[20] **A:** This is a society of - it's been in  
[21] existence since the late 19th century. The focus  
[22] is upon variations in American English of all  
[23] sorts, pronunciation, lexicon, that is, word  
[24] choice, word - the word usages, grammar,  
[25]

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**Butters**

- [1]  
[2] meaning. And the Journal of American Speech  
[3] which I edited for all those years publishes  
[4] articles primarily on - in the field of American  
[5] English, pronunciation, lexicon, that is -  
[6] **THE WITNESS:** Did you need the  
[7] spelling for that?  
[8] **A:** Lexicon, morphology, syntax,  
[9] semantics.  
[10] **Q:** Does language usage change over time?  
[11] **A:** Yes.  
[12] **MR. AARON:** I'd like to have marked as  
[13] Butters Exhibit 2 a document, the cover of  
[14] which is entitled "Subpoena In A Civil  
[15] Case".  
[16] (Butters Exhibit 2, Subpoena In A  
[17] Civil Case, marked for identification, as of  
[18] this date.)  
[19] **Q:** Professor Butters, you've been handed  
[20] what's been marked as Butters Exhibit 2. Do you  
[21] recognize this document?  
[22] **A:** Yes, I do.  
[23] **Q:** And I will note that in the document  
[24] towards the end is a series of document requests  
[25] starting at page 3 of attachment B.

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**Butters**

- [1]  
[2] **A:** Yes, sir.  
[3] **Q:** And did you conduct a search for the  
[4] documents requested therein?  
[5] **A:** Yes, I did.  
[6] **Q:** And did you bring documents with you  
[7] here today?  
[8] **A:** Yes, I have.  
[9] **Q:** Okay. May I see these, please?  
[10] (Handing.)  
[11] **Q:** What I'm going to do when we're off  
[12] the record is have these documents copied and  
[13] I'll ask you specific questions about them  
[14] later. But could you characterize what is  
[15] contained in these two folders of materials,  
[16] generally?  
[17] **A:** Yes. It contains correspondence  
[18] between me and the attorneys for Washington  
[19] Redskins. It contains drafts of my report of  
[20] which you have a copy of the final version.  
[21] **Q:** I do.  
[22] **A:** It contains copies of the various  
[23] items that I consulted and used in the  
[24] preparation of my report. It contains copies of  
[25] a few pages of handwritten notes and typed notes

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**Butters**

- [1] **Butters**  
[2] that I made prior to the writing of my report.  
[3] There are a few documents which were also sent me  
[4] by the attorneys that I mentioned before.  
[5] **Q:** The attorneys that you're referring to  
[6] are attorneys from the law firm of White & Case?  
[7] **A:** That's correct. I think all the  
[8] correspondence I had has been with Nadine Flynn.  
[9] **Q:** Okay. And did the lawyers at White &  
[10] Case, in addition to the materials that are  
[11] contained in these two folders, also send to you  
[12] voluminous materials containing articles and  
[13] press guides?  
[14] **A:** Two boxes.  
[15] **Q:** Okay. What we'll do later is - I  
[16] have copies of those things already here which  
[17] your counsel was kind enough to provide me  
[18] yesterday. So we'll go through that as well.  
[19] Aside from the two folders of  
[20] documents that you've brought and the materials  
[21] that were contained in the two boxes, are there  
[22] any other documents that are responsive to the  
[23] requests contained in Exhibit 2, to your  
[24] knowledge?  
[25] **A:** Yes.

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**Butters**

- [1] **Butters**  
[2] **Q:** And what are those?  
[3] **A:** There's - there's a fishing -  
[4] there's a copy of my report on the fish treaty  
[5] that I mentioned to you before which I sent to  
[6] Nadine Flynn some time ago. And I did - I  
[7] just - I simply forgot that I sent that to her  
[8] because that wasn't in my file. And I just -  
[9] until I got here and was really reading the  
[10] correspondence, I didn't realize that I had sent  
[11] that to her.  
[12] **RQ MR. AARON:** Ms. Flynn, would you  
[13] provide us a copy with that?  
[14] **MS. FLYNN:** Certainly. As soon as  
[15] Mr. Butters gets home, he'll forward me a  
[16] copy and I'll forward same to you.  
[17] **MR. AARON:** Thank you.  
[18] **Q:** Any other documents that are  
[19] responsive to the request?  
[20] **A:** Not to my knowledge.  
[21] **Q:** Okay. And, I take it, no documents  
[22] were withheld from production on the basis of  
[23] privilege or some other basis, to your knowledge?  
[24] **A:** No.  
[25] **MS. FLYNN:** There's just one thing I

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**Butters**

- [1] **Butters**  
[2] would like to point out going backwards for  
[3] a moment. With respect to that report that  
[4] he's referring to, it has to do with - and  
[5] I don't know if he mentioned this before -  
[6] it doesn't have to do with the  
[7] interpretation of the word redskins, so it  
[8] doesn't pertain to anything in this  
[9] proceeding or the report. But since it  
[10] dealt with communications with an Indian  
[11] group, we wanted to see it for ourselves for  
[12] the purpose of the deposition. Just so  
[13] you're aware of what the content of that  
[14] document is.  
[15] **MR. AARON:** Thank you.  
[16] **A:** There's also some discussion of the  
[17] syntax of one of the clauses. It's a relative  
[18] clause and I can't remember the details, but that  
[19] really has nothing to do with Native Americans at  
[20] all. It also only has to do with American  
[21] syntax.  
[22] **Q:** And -  
[23] **MS. FLYNN:** Could I have just one  
[24] moment?  
[25] (Discussion off the record.)

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**Butters**

- [1] **Butters**  
[2] **A:** There's one other matter that I forgot  
[3] to mention. In this - I was sent all the copies  
[4] of all of the reports that were prepared by your  
[5] law firm on behalf of your experts. I brought  
[6] with me only those - only those reports that I  
[7] made any marks on. The others, I left behind.  
[8] And I didn't realize that I was supposed to bring  
[9] those. And if you'd like to see copies of those,  
[10] I can bring - I can send those to you also.  
[11] They were outside my sphere of expertise, by and  
[12] large, and I didn't write anything on them.  
[13] **Q:** Did you read those other reports?  
[14] **A:** I read them quickly.  
[15] **MS. FLYNN:** If you'd like, Mr. Butters  
[16] is more than willing to look at what was  
[17] marked at yesterday's deposition to confirm  
[18] what was sent in. Or the alternative, he  
[19] certainly can send you copies. But he can  
[20] verify that the ones that were produced  
[21] yesterday by Mr. Barnhart are identical to  
[22] the ones that he received as well. They're  
[23] the exact copies except for the ones with  
[24] writing that are being produced today with  
[25] his own personal writings.



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**Butters**

- [1]  
[2] **Q:** With respect to the reports that you  
[3] did not bring with you, did you rely upon those  
[4] in any manner in reaching the conclusions drawn  
[5] in the report that you submitted in this case?  
[6] **A:** No, I didn't see any of those reports  
[7] until after I wrote my report.  
[8] **Q:** Okay.  
[9] **MR. AARON:** Ms. Flynn, you're not  
[10] aware of any documents that were withheld  
[11] that were called for in the subpoena?  
[12] **MS. FLYNN:** There were no documents  
[13] that were withheld on any privilege or for  
[14] any other reason. With the exception of  
[15] these other documents, everything has been  
[16] produced.  
[17] **A:** There may have been a cover letter,  
[18] although I don't recall receiving a cover  
[19] letter. If there was a cover letter, I probably  
[20] Xeroxed it and put it in with this packet of  
[21] materials that's now being duplicated. I'm not  
[22] sure about that.  
[23] **Q:** Okay.  
[24] **A:** If there was a cover letter and it's  
[25] not in there, then I may not have it.

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**Butters**

- [1]  
[2] **Q:** Very good.  
[3] I take it, Professor Butters, that,  
[4] aside from the drafts that are contained in the  
[5] materials that are now being photocopied, there  
[6] are no other drafts of your report in existence;  
[7] is that correct?  
[8] **A:** To the best of my knowledge.  
[9] **Q:** And was that report prepared on a word  
[10] processor or on a computer?  
[11] **A:** Yes.  
[12] **Q:** Do any prior drafts of your report  
[13] exist in a computer database in a form different  
[14] from the form that is contained in the documents  
[15] that are being photocopied?  
[16] **A:** I printed and brought with me every -  
[17] everything that was in my file for this case.  
[18] All stages of the documents that exist in my  
[19] computer are now being Xeroxed.  
[20] **Q:** Okay. Who retained you for purposes  
[21] of rendering an expert opinion in this matter?  
[22] **A:** The - I hope I get this right. I  
[23] always get the names reversed. Which comes  
[24] first? Is it alphabetical?  
[25] **MS. FLYNN:** It's White & Case. Not to

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**Butters**

- [1]  
[2] prep the witness here but, it is White &  
[3] Case.  
[4] **A:** The law firm of White & Case.  
[5] **Q:** Was it done through Ms. Flynn or  
[6] Mr. Reiner?  
[7] **A:** Nadine Flynn.  
[8] **Q:** Okay. Have you had any contacts with  
[9] anyone at the Washington Redskins' organization  
[10] in the context of preparing your report in this  
[11] matter?  
[12] **A:** No, I have not.  
[13] **Q:** Do you recall approximately when you  
[14] were retained?  
[15] **A:** It was late last winter or early last  
[16] spring of 1996.  
[17] **Q:** In the course of preparing your  
[18] report, did you have communications with  
[19] attorneys from White & Case?  
[20] **A:** During the time in which my report was  
[21] being prepared, I spoke with both Nadine Flynn  
[22] and John Reiner.  
[23] **Q:** And did they suggest changes to that  
[24] report?  
[25] **A:** Suggest changes? I'm pausing because

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**Butters**

- [1]  
[2] I'm trying to remember, because I want to answer  
[3] this honestly. To the best of my memory, no.  
[4] **Q:** Did you provide earlier drafts of your  
[5] report to the attorneys from White & Case?  
[6] **A:** I came to New York on one occasion, I  
[7] think it was probably in early June, and brought  
[8] with me a - I think it was just in my computer  
[9] or on a computer disk a draft copy of the report  
[10] which we - which we read through and discussed  
[11] and then I went back and finished it.  
[12] **Q:** Did you make revisions while you were  
[13] here in New York to the report?  
[14] **A:** No.  
[15] **Q:** In the course of preparing your  
[16] report, did you have communications with anyone  
[17] else concerning the content thereof?  
[18] **A:** I'd like you to clarify that question,  
[19] because do you mean did I ask anyone anything  
[20] about the term redskins or do you mean did I show  
[21] a copy of the report to someone and ask for their  
[22] advice or -  
[23] **Q:** Both.  
[24] **A:** Both.  
[25] **Q:** And we can take it in two stages.

Page 21

**Butters**

[1]  
[2] **A:** Let's take the second question first.  
[3] The answer to the second question is no.  
[4] **Q:** Okay.  
[5] **A:** No one else read a draft of any  
[6] version of this until the final version except  
[7] Nadine Flynn and Jack Reiner. With respect to  
[8] the term redskins, I did make an inquiry, and  
[9] the - by E-mail which I saved, and copies of  
[10] which are in the file that are currently being  
[11] photo duplicated.  
[12] I did make an inquiry from Randy  
[13] Roberts at the University of Missouri special  
[14] collection. There was a very interesting  
[15] collection of lexicographical materials. And I  
[16] did ask him to check his files and see if he  
[17] found the term redskin anywhere therein. And he  
[18] sent me back, I think, three citations from the  
[19] Peter Tamony collection, it's called, after an  
[20] eccentric San Francisco lawyer who filled his  
[21] house with newspaper clippings. And, when he  
[22] died, he sent them all to the University of  
[23] Missouri carefully cataloged. So that inquiry I  
[24] did make of another person.  
[25] You'll also find in that file some

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**Butters**

[1]  
[2] E-mail messages that I exchanged with some  
[3] friends at another - at two other universities,  
[4] my former professor, Robert Wachal, and my  
[5] colleague, Larry Davis.  
[6] Larry Davis sent me a joke that  
[7] involved the word squaw and I sent him back a  
[8] message saying something like, would you be  
[9] offended if I used the term redskins? I can't  
[10] remember the exact wording. And Wachal replied  
[11] no. And Larry replied no as well. So those are  
[12] the only inquiries I made of other people in  
[13] any - in writing.  
[14] **Q:** Did you have discussions with any  
[15] Native Americans in the course of preparing your  
[16] report?  
[17] **A:** Not with people who I know were Native  
[18] Americans, but - I'm quite sure Larry Davis is  
[19] not Native American. I'm not sure of Robert  
[20] Wachal, W-A-C-H-A-L, or Randy Roberts. Roberts  
[21] is at the University of Missouri in the library.  
[22] Larry Davis is chairman of the department of  
[23] English at Wichita State.  
[24] **Q:** And what about Mr. Wachal?  
[25] **A:** He's professor of English at the

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**Butters**

[1]  
[2] University of Iowa. He was one of my  
[3] professors. I believe he's now retired.  
[4] **Q:** Aside from the report you submitted in  
[5] this matter and any materials contained in the  
[6] folders that are being photocopied, are there any  
[7] other documents in which you express opinions  
[8] relating to the subject matter of this case?  
[9] **A:** Not to my knowledge.  
[10] **Q:** What was the specific assignment that  
[11] was given to you in connection with this matter?  
[12] **A:** Thank you. I was asked to research  
[13] the history of - the evolving history of the  
[14] meaning of the term redskin in American English.  
[15] **Q:** Did you find that the history had, in  
[16] fact, evolved, had changed over time?  
[17] **A:** Yes.  
[18] **Q:** And in what manner did it change?  
[19] **A:** I think the major change began with  
[20] the inception of the Washington Redskins football  
[21] team in the 1930s. As that team evolved and as  
[22] professional football grew more and more popular  
[23] and influential in American popular culture, the  
[24] term Washington Redskins, in general the larger  
[25] term Washington Redskins, and then more

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**Butters**

[1]  
[2] particularly the shortening of Washington  
[3] Redskins to Redskins began to take on a meaning  
[4] of its own identified with the football team. So  
[5] that this secondary meaning became a very  
[6] important meaning for the term itself.  
[7] **Q:** You indicated that was the major  
[8] change. Were there any other changes that  
[9] occurred over time in connection with use of the  
[10] word redskin?  
[11] **A:** In the last 10 or 15 years, one begins  
[12] to see in dictionaries the - in some  
[13] dictionaries the labeling of the term redskin as  
[14] sometimes offensive. One also begins to see in  
[15] very recent years references to the use of the  
[16] term redskin as a possibly offensive term. So  
[17] that there is this, what I would say - my  
[18] conclusion is a very recent incipient change.  
[19] **Q:** What do you mean by use of the word  
[20] incipient?  
[21] **A:** I'm thinking now of - well, what I  
[22] mean by the term incipient is that it's a change  
[23] which, by no means, has been popularly accepted,  
[24] one that - it's impossible to predict the  
[25] linguistic future. 100 years from now that

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**Butters**

- [1]  
[2] particular linguistic change could be just a  
[3] historical footnote or it could be something that  
[4] has become widespread. It's really very hard to  
[5] say. That's what I mean by incipient. It's sort  
[6] of at the beginning of a wide-spread linguistic  
[7] change. But, as we know, many potential changes  
[8] die out.  
[9] Q: Did you ever express a view that the  
[10] assignment you were given in this case was a  
[11] tough one?  
[12] A: I don't remember expressing such a  
[13] view.  
[14] Q: Did you have such a view?  
[15] A: Well, it's tough in the sense that  
[16] there's an enormous amount of material to be  
[17] covered. It has been a very time consuming  
[18] endeavor. And it's tough, I think, in that  
[19] sense. I suppose - well, you want an honest  
[20] answer? It's tough also in the sense that I  
[21] certainly don't want to be in the position of -  
[22] I want to phrase this in just the right way.  
[23] It's tough in the sense that I guess I'm  
[24] politically sort of an ultra liberal who is  
[25] not - who is very sympathetic to the wrongs that

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**Butters**

- [1] have been inflicted upon Native Americans  
[2] throughout American history, and I wouldn't want  
[3] to do anything that did any damage to Native  
[4] Americans.  
[5] Q: Have you ever physically been to a  
[6] Redskins game -  
[7] A: No.  
[8] Q: - Washington Redskins game? Are you  
[9] a fan of the Washington Redskins?  
[10] A: No.  
[11] Q: Do you watch any professional football  
[12] on television?  
[13] A: Never.  
[14] Q: College football?  
[15] A: I went to a University of Iowa  
[16] football game as an undergraduate.  
[17] Q: Duke basketball?  
[18] A: The last basketball game I went to was  
[19] in 1958.  
[20] Q: Who played?  
[21] A: University of Iowa played somebody. I  
[22] left at half time. I was an undergraduate.  
[23] Q: Do you have any projects currently  
[24] underway in connection with this matter?  
[25]

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**Butters**

- [1] A: Projects?  
[2] Q: Any further work that you're presently  
[3] doing aside from in connection with this  
[4] deposition.  
[5] A: Oh, I'm continuing to read and do  
[6] research, yes.  
[7] Q: Other than materials that are  
[8] contained in the two folders that are being  
[9] photocopied, are there any other written  
[10] materials concerning that research or materials  
[11] in any form, computer or hard copy?  
[12] A: I've - I checked out a lot of books  
[13] from the library and I Xeroxed some pages from  
[14] those books. I also downloaded some things from  
[15] the Internet.  
[16] Q: And are those included in the folders?  
[17] A: No, those are not.  
[18] Q: And you have those pages back in your  
[19] office?  
[20] A: Yes.  
[21] RQ MR. AARON: I'd request a production  
[22] of such materials.  
[23] MS. FLYNN: We have no objection to  
[24] that. Certainly, we'll produce it.  
[25]

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**Butters**

- [1] A: This is an ongoing project. You want  
[2] me to continue to send them as I generate them or  
[3] everything up to this point?  
[4] MS. FLYNN: Just one clarification for  
[5] the record. Anything to do with this  
[6] proceeding or your report, anything beyond,  
[7] that's what the request is asking for.  
[8] THE WITNESS: I see.  
[9] MS. FLYNN: To the extent I know from  
[10] having spoken with Mr. Butters that there's  
[11] at least - off the record for one second.  
[12] (Discussion off the record.)  
[13] MS. FLYNN: The "Ohitika Woman"  
[14] article is one article that he was referring  
[15] to that has been produced. But if there are  
[16] any others, I'll have them. But at least  
[17] that one has been produced which is  
[18] subsequent to the time of the report.  
[19] A: I've included that one because I also  
[20] sent a copy to Nadine Flynn. As I understood the  
[21] subpoena, anything that had been exchanged  
[22] between us you were asking for. So that was a  
[23] part of our communication and I included that -  
[24] Q: Okay.  
[25]

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**Butters**

- [1]  
[2] **A:** - since I sent a copy of that to her.  
[3] **Q:** If you could provide those materials  
[4] to your counsel and she could forward them to us,  
[5] I would appreciate it.  
[6] **A:** Okay.  
[7] **Q:** Thank you.  
[8] Are you familiar with David Barnhart?  
[9] **A:** Yes.  
[10] **Q:** And who is Mr. Barnhart?  
[11] **A:** He's the president of - I may not do  
[12] the name - Lexik House, I believe it is. He's  
[13] also a long-time member of the Dictionary Society  
[14] of North America and the American Dialect  
[15] Society, and I've known David through the  
[16] American Dialect Society meetings for at least 20  
[17] years, I think. Almost exact contemporaries.  
[18] **Q:** Do you have an opinion as to his  
[19] reputation in the field of lexicology, if I've  
[20] named that field correctly?  
[21] **A:** I would say lexicography.  
[22] **Q:** Okay. As corrected by you, do you  
[23] have an opinion as to his reputation?  
[24] **A:** It's - David has a very, very high  
[25] reputation.

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**Butters**

- [1]  
[2] **Q:** What understanding, if any, do you  
[3] have of the assignment that Mr. Barnhart was  
[4] given in connection with this matter?  
[5] **A:** As I understand it, and this comes  
[6] partly from reading his report, he was asked to  
[7] do the dictionary research to look at the history  
[8] of the term redskin within the framework of the  
[9] existing lexicographical record and to give his  
[10] opinion as to how - if and how the term redskin  
[11] had changed within that particular framework.  
[12] **Q:** In what ways, if any, did  
[13] Mr. Barnhart's assignment, as you understand it,  
[14] differ from your own?  
[15] **A:** My task was only secondarily  
[16] dictionary-oriented and I really looked at the  
[17] primary materials, that is, the - by "primary  
[18] materials", I mean the materials within which the  
[19] term redskin appeared. So I was to really look  
[20] at it more as a more general expert on the  
[21] history of American English, and his - he was to  
[22] look at it as a lexicographer.  
[23] **Q:** And just so we understand or so I  
[24] understand what you mean by lexicography, could  
[25] you tell me what you mean by lexicographer?

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**Butters**

- [1]  
[2] **A:** Lexicography is the science of  
[3] dictionary making. Could I take a break?  
[4] **MR. AARON:** Yes.  
[5] (Recess taken.)  
[6] **MS. FLYNN:** During the brief break we  
[7] just had, Mr. Butters informed me that,  
[8] although he had previously stated that he  
[9] had thought that he had forgotten to bring  
[10] with him certain of the articles that  
[11] petitioners' counsel has requested be  
[12] produced, he just recalled that they were  
[13] actually in his bag. We have now produced  
[14] all the articles that were previously  
[15] referenced and they are being photocopied.  
[16] The only documents that Mr. Butters  
[17] will produce subsequent to this, up to this  
[18] point in the deposition that have been  
[19] discussed, are the fishing treaty article  
[20] and the additional reports of the  
[21] petitioners' experts which he received  
[22] copies of and brought only some of them with  
[23] him today, copies as we discussed before.  
[24] The copies that he has not brought have no  
[25] written notes in them.

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**Butters**

- [1]  
[2] **MR. AARON:** You don't need to produce  
[3] to us copies of those reports because we  
[4] obviously already have them.  
[5] **MS. FLYNN:** All right, fine.  
[6] **MR. AARON:** Thank you. We would like  
[7] the fish treaty article.  
[8] **MS. FLYNN:** Of course.  
[9] **Q:** Professor Butters, I'd like to hand  
[10] you what was marked at yesterday's deposition as  
[11] Barnhart Exhibit 3. It's a document, the cover  
[12] of which is a June 8, 1996 letter from David  
[13] Barnhart to John Reiner.  
[14] Professor Butters, have you seen a  
[15] copy of this document prior to today?  
[16] **A:** Yes, I had.  
[17] **Q:** And am I correct that this is the  
[18] report prepared by Mr. Barnhart in connection  
[19] with this matter?  
[20] **A:** That is correct.  
[21] **Q:** And prior to preparation of your  
[22] report, had you seen this report?  
[23] **A:** No.  
[24] **Q:** Prior to preparing of your report, had  
[25] you had any discussions with Mr. Barnhart

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[1] **Butters**  
[2] concerning use of the term redskins?  
[3] **A:** No.  
[4] **Q:** Subsequent to preparing of your  
[5] report, you have had the opportunity to read this  
[6] report, correct?  
[7] **A:** Correct.  
[8] **Q:** Did you agree with the conclusions  
[9] drawn by Mr. Barnhart in this report?  
[10] **A:** Yes, I do.  
[11] **Q:** Do you have any criticisms of the  
[12] report?  
[13] **A:** Let me just thumb through it. I don't  
[14] have my copy here, so I don't - I -  
[15] **Q:** Is there a copy in the materials that  
[16] you provided?  
[17] **A:** Yes.  
[18] **Q:** Might it have some handwritten  
[19] notations on it?  
[20] **A:** It has a very few.  
[21] **Q:** What may be best, then, is I can hold  
[22] that question in abeyance and give you an  
[23] opportunity to look at your copy, because perhaps  
[24] that might refresh your recollection.  
[25] **A:** Right. I can say at this point that I

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[1] **Butters**  
[2] have no substantial criticisms of Mr. Barnhart's  
[3] report. And I'm in strong agreement with the  
[4] report in general, with the specific conclusions  
[5] that he draws.  
[6] **Q:** Have you ever spoken with any Native  
[7] Americans?  
[8] **A:** Yes.  
[9] **Q:** In speaking with a Native American, in  
[10] your professional opinion, would it be  
[11] appropriate to refer to that person as a redskin?  
[12] **A:** It depends on the context.  
[13] **Q:** The context is you're speaking with  
[14] that person and you are a redskin or some  
[15] equivalent. Would that be appropriate use of the  
[16] language, in your professional opinion?  
[17] **A:** Again, this would depend on the  
[18] context.  
[19] **Q:** In the course of a dialogue with a  
[20] Native American you're meeting for the first  
[21] time.  
[22] **A:** Meeting for the first time? Again, it  
[23] would depend on - on the context.  
[24] **Q:** Could you imagine a circumstance or a  
[25] context in which it would be appropriate, in your

Page 35

[1] **Butters**  
[2] professional opinion?  
[3] **A:** Yes.  
[4] **Q:** Give me an example, please.  
[5] **A:** Well, suppose that I were - the first  
[6] time I met my friend Antoinette, that Antoinette  
[7] had referred to herself as a redskin in the  
[8] course of the conversation. Then it would seem  
[9] to me it would be perfectly appropriate under  
[10] many circumstances, at least, for me to use the  
[11] same word.  
[12] **Q:** In your professional opinion, are  
[13] there circumstances where it would be  
[14] inappropriate when you're meeting a Native  
[15] American for the first time to refer to that  
[16] person as a redskin?  
[17] **A:** I think that under - well, it's my  
[18] professional opinion that the use of anything  
[19] other than relatively formal English in speaking  
[20] with anyone the first time you meet them,  
[21] particularly with respect to ethnic labeling,  
[22] might be misconstrued. The first time I met  
[23] someone from England, I referred to her as a  
[24] Brit, she might find this offensive.  
[25] The first time I met someone from

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[1] **Butters**  
[2] Nebraska and referred - if I referred to them as  
[3] cornhuskers, this might be - this might be  
[4] viewed as offensive. So that the most formal  
[5] terms are generally appropriate under  
[6] circumstances of a first meeting. And informal  
[7] terms can be construed as offensive under  
[8] circumstances of - you know, within formal  
[9] circumstances.  
[10] If I were to start addressing you as  
[11] "hey guy" under these circumstances of this  
[12] deposition, this could be - this would be  
[13] inappropriate because it would be the use of an  
[14] informal term - an informal term, and you could  
[15] find this offensive.  
[16] **Q:** So use of the term redskin is a form  
[17] of ethnic labeling, in your opinion?  
[18] **A:** It's a - when it's used to refer to  
[19] an American Indian, it is an ethnic term.  
[20] **Q:** I was trying to use your phrase from  
[21] earlier.  
[22] **A:** Right.  
[23] **Q:** Is it fair to call it ethnic labeling?  
[24] **A:** So long as you don't construe the term  
[25] labeling in any invidious way.

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**Butters**

- [1]  
[2] **Q:** Might a Native American view use of  
[3] the term redskin in an offensive manner?  
[4] **A:** Under some circumstances, some Native  
[5] Americans might find it offensive, yes.  
[6] **Q:** In your professional opinion, should  
[7] the word redskin have a usage label in the  
[8] dictionary "offensive"?  
[9] **A:** A single – a word? Do you mean that  
[10] that would be the only thing that would be in the  
[11] label?  
[12] **Q:** Okay. That's my first question.  
[13] That's the only thing that's in the label, you  
[14] know, in the dictionary, usage label offensive.  
[15] **A:** I think that – no.  
[16] **Q:** Okay. If there were something else in  
[17] the label in addition?  
[18] **MS. FLYNN:** For point of  
[19] clarification, are we talking about in  
[20] 1996?  
[21] **MR. AARON:** Okay, 1996.  
[22] **Q:** Why don't I repeat the question.  
[23] **A:** Please do.  
[24] **Q:** In a dictionary today, in your  
[25] professional opinion, should the word redskin

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**Butters**

- [1] contain a usage label offensive?  
[2] **A:** The single word offensive as a usage  
[3] label, I think, would be inappropriate.  
[4] **Q:** Okay. Would you label such a word  
[5] today as usually offensive?  
[6] **A:** No.  
[7] **Q:** Would you label redskin today as  
[8] sometimes offensive?  
[9] **A:** You're getting closer to the mark, but  
[10] I still would – I still think that's too strong.  
[11] **Q:** Okay. Without getting caught up into  
[12] how a dictionary would label it, why don't you  
[13] tell me, in your professional opinion, if you  
[14] could. Put it down in as many words as you  
[15] wanted, what usage label you would apply to that  
[16] term.  
[17] **A:** I think if I were in charge of  
[18] Webster's 11th Collegiate Dictionary, I would  
[19] write a whole usage note that would be, perhaps,  
[20] 10 lines long. And I'm not – if you'd like me  
[21] to compose one of those at home and send it to  
[22] you, I would do it, but I'm not going to do it  
[23] today because I think it would require a good  
[24] deal of thought because it is a complex term.  
[25]

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**Butters**

- [1]  
[2] **Q:** Why don't you give me the substance of  
[3] what it would contain.  
[4] **A:** Well, one of the things I think it  
[5] should contain is that this is a term that's –  
[6] this has a secondary meaning that's applied to  
[7] the Washington Redskins football team. And under  
[8] those circumstances, it is not – it is not  
[9] offensive under – you know, really in any way.  
[10] Beyond that, it seems to me that a  
[11] dictionary maker would have some obligation to  
[12] suggest that some Native Americans – at least  
[13] some Native American activists find this term  
[14] offensive, and that one should take – be  
[15] cautious in the use of the term in formal  
[16] situations.  
[17] **Q:** Is it some Native American activists  
[18] or some Native Americans?  
[19] **A:** I said activists.  
[20] **Q:** Do you have to be an activist, in your  
[21] opinion, in order to find the term offensive?  
[22] **A:** That's not an easy question to answer  
[23] because it's one that doesn't quite compute as a  
[24] question.  
[25] **Q:** In your professional opinion, in order

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**Butters**

- [1] to find that term offensive, would a Native  
[2] American have to be an activist?  
[3] **MS. FLYNN:** Could I hear that question  
[4] read back?  
[5] **A:** I'm still having trouble understanding  
[6] the question and I'm not sure why. It seems to  
[7] have perfectly good English words in it.  
[8] **MR. AARON:** Why don't you read it  
[9] back, please.  
[10] (Record read.)  
[11] **A:** Again, this depends entirely on the  
[12] circumstances.  
[13] **Q:** But there are some circumstances when  
[14] a Native American who is not an activist would  
[15] find that term offensive, in your professional  
[16] opinion?  
[17] **A:** Again, in the use of an informal term  
[18] in a formal circumstance, regardless of what the  
[19] term and regardless of who the speakers are, may  
[20] be construed as offensive. To see someone on the  
[21] street whom you don't know, even if he or she is  
[22] not an activist and to say "Redskin" or "Hey  
[23] Indian" or, "Hey, Native American" could be  
[24] construed as an insult because of the – because  
[25]

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[1] **Butters**  
[2] of the circumstances. So, really, it's  
[3] contingent entirely upon the circumstances.  
[4] **Q:** Have you ever conducted a survey of  
[5] Native Americans concerning use of the word  
[6] *redskin*?  
[7] **A:** No, I have not.  
[8] **Q:** Have you ever read such a survey?  
[9] **A:** Yes, I have.  
[10] **Q:** And where did you read that?  
[11] **A:** Mr. Ivan - Professor Ivan Ross'  
[12] survey was included in the materials - or the  
[13] report that your law firm wrote using Mr. Ross'  
[14] materials was sent to me.  
[15] **Q:** Had you read that report prior to the  
[16] preparation of your report?  
[17] **A:** No, I had not.  
[18] **Q:** So the conclusions you reached in your  
[19] report were not based upon any type of survey  
[20] results, correct?  
[21] **A:** It depends on what you mean by  
[22] survey. If you mean survey of the sort that  
[23] Professor Ross - a marketing survey of - then,  
[24] no. I surveyed the literature and I surveyed  
[25] the - in the broader term of the sense survey, I

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[1] **Butters**  
[2] surveyed the Library of Congress catalog.  
[3] I did not survey - I did not do an  
[4] interview - I did not do a questionnaire survey  
[5] or a telephone survey with Native Americans, no,  
[6] I did not.  
[7] **Q:** And, in fact, you didn't speak with  
[8] anyone who you knew to be a Native American in  
[9] connection with the preparation of your report,  
[10] correct?  
[11] **A:** That's correct.  
[12] **Q:** Having read Professor Ross' survey,  
[13] does it change, in any way, the conclusions you  
[14] reached in your report?  
[15] **A:** No, it does not.  
[16] **Q:** Why not?  
[17] **A:** Because it doesn't - it doesn't  
[18] substantiate the - it doesn't substantiate the  
[19] claim that *redskin* is a derogatory term.  
[20] **Q:** Is it an offensive term?  
[21] **A:** Is it an offensive term?  
[22] **Q:** Yes.  
[23] **A:** This question has been asked before.  
[24] **Q:** Based upon that professor's report?  
[25] **A:** Oh, what his report shows is

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[1] **Butters**  
[2] consistent with my answer to your previous  
[3] question about the nature of the term *redskin*  
[4] with respect to the term offensive.  
[5] **Q:** In certain circumstances it can be?  
[6] **A:** That would be - that is my inference  
[7] based upon the report. That would also be my  
[8] inference from the report, yes, Mr. Ross' report.  
[9] **Q:** In conversation that you've had with  
[10] Native Americans, have you ever used the term  
[11] *redskin*?  
[12] **A:** I don't know. I may well have.  
[13] **Q:** Do you have any recollection one way  
[14] or the other?  
[15] **A:** I have no recollection one way or the  
[16] other. I did see someone wearing a Washington  
[17] Redskins jacket in the home of Antoinette, my  
[18] friend Antoinette, on Thanksgiving day -  
[19] Antoinette is a Native American - and no one  
[20] made any comments about that. That's as close as  
[21] I've come, to my recollection, of the word  
[22] *redskin* personally within the framework of -  
[23] **Q:** Did you discuss with your friend  
[24] Antoinette the term *redskin* as it applied to  
[25] Native Americans?

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[1] **Butters**  
[2] **A:** No, I did not.  
[3] **Q:** In your professional opinion, is the  
[4] term *redskin* disparaging?  
[5] **A:** No.  
[6] **Q:** What is disparaging? What does the  
[7] term disparaging mean, in your professional  
[8] opinion?  
[9] **A:** Disparaging means that - let me just  
[10] say that for a term to be disparaging, it must be  
[11] uttered or written with the intent to insult or  
[12] belittle. That's a fairly standard, not only  
[13] dictionary definition, but even in the front  
[14] material of several dictionaries you'll find that  
[15] disparaging is defined with respect to the intent  
[16] of the speaker.  
[17] **Q:** In your professional opinion, if the  
[18] speaker knows that the word is considered  
[19] offensive by the listener and the speaker uses  
[20] that term, could I conclude that the speaker  
[21] intended to use the word in a disparaging way?  
[22] **A:** Under those circumstances, yes. And,  
[23] again, this could be said about virtually any  
[24] word, cow, cowboy, Indian, native.  
[25] **Q:** In your professional opinion, *redskin*

Page 45

[1] *Butters*

[2] is a neutral term?

[3] A: Redskin is an informal – not

[4] really – again, we also should be talking, I

[5] guess, what year are you talking about and which

[6] speakers are you referring to? But, generally,

[7] speaking throughout American history for all

[8] speakers and in current American English for most

[9] speakers, redskin is an informal – has been an

[10] informal, neutral term.

[11] Q: In your professional opinion in the

[12] course of your research into the primary

[13] materials, did you find any occasions where the

[14] word redskin was used in a disparaging way?

[15] A: No, not to the best of my

[16] recollection.

[17] Q: Did you have an opportunity in

[18] connection with this matter to review the expert

[19] disclosure for Geoffrey Nunberg?

[20] A: Yes, I did.

[21] Q: And, I take it, you read that after

[22] you had prepared your report?

[23] A: That's correct.

[24] Q: I'd like to show you what was marked

[25] at yesterday's deposition as Barnhart Exhibit 4

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[1] *Butters*

[2] which is the expert disclosure for Geoffrey

[3] Nunberg. That's what it's labeled. Can you

[4] identify that as the report of Geoffrey Nunberg

[5] that you reviewed?

[6] A: Yes. It appears to be it, yes.

[7] Q: I refer you to page 8 of Mr. Nunberg's

[8] report and specifically item 4. And I'm quoting

[9] from the Rocky Mountain News, "And excited by

[10] firewater they dug up their rusty hatchets and

[11] prepared for blood and thunder. 'Ugh,' said

[12] every greasy redskin."

[13] In your professional opinion, is the

[14] use of the term redskin disparaging in this

[15] quote?

[16] A: Not by itself. It's combined with the

[17] adjective greasy which I think is what is the

[18] first indication that the readers – that the

[19] author's intent here was disparaging. The term

[20] redskin by itself is not disparaging. The

[21] context in which it's placed suggests one might

[22] infer that disparaging intent was in the author's

[23] mind. But the term redskin here in and by itself

[24] is not disparaging.

[25] Q: Let me refer you to the next page,

Page 47

[1] *Butters*

[2] please, which is page 9 of 15, item 10. Headline

[3] from the Rocky Mountain News. "Marauding Bands of

[4] Redskins Make Travel Absolutely Dangerous in the

[5] Bad Lands."

[6] In your professional opinion, is the

[7] use of the term redskins in this quote

[8] disparaging?

[9] A: It's much – taken out of context, all

[10] we have here is the headline so we don't have the

[11] story. Taken out of context, the term redskins

[12] itself here seems – I think it would be

[13] inappropriate to judge the term redskins here as

[14] intended as disparaging. The term marauding is

[15] the only possible clue here that the term

[16] redskins might be intended as disparaging.

[17] This sentence could have easily have

[18] read, marauding bands of Indians make travel

[19] absolutely dangerous in the bad lands. It would

[20] mean exactly the same thing. So redskins or

[21] Indians here is – are interchangeable terms in

[22] terms of the connotations of the words.

[23] Q: In your professional opinion, are the

[24] terms redskin and Indian completely synonymous?

[25] A: No two terms are completely

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[1] *Butters*

[2] synonymous.

[3] Q: In your professional opinion, does

[4] redskin have a negative connotation when compared

[5] with the word Indian?

[6] A: In 1996, for some speakers under some

[7] circumstances, the answer to that question would

[8] be yes. In 1891 for Americans in general, the

[9] answer is – I'm not sure how the question was

[10] framed. You have to rephrase it. Well, let me

[11] just say that the term redskins is not, in 1891,

[12] a negative term.

[13] Q: What about 1961?

[14] A: 1961, no.

[15] Q: 1967?

[16] A: 1967, we're at the very beginning of

[17] this sort of politically correct movement, I

[18] guess, in which it might be possible – that's –

[19] that's the point in which this incipient

[20] linguistic change seems first to be documented.

[21] Q: What is standard English?

[22] A: Well, the term standard is a somewhat

[23] large cover term for the variety of English that

[24] is spoken and/or written by educated Americans.

[25] Now, that's a very large cover term. And the



Page 49

**Butters**

[1]  
[2] first thing you need to do is distinguish between  
[3] spoken standard English and written standard  
[4] English. Mostly, people tend to think of  
[5] standard English in terms of written varieties.  
[6] But there are obviously pronunciations that  
[7] deviate somewhat from standard English as well.  
[8] But a general definition would be standard  
[9] English is the English spoken and/or written by  
[10] educated Americans.

[11] **Q:** Do you agree that standard English  
[12] contains a number of varieties and dialects?

[13] **A:** Well, again, dialect is a term that  
[14] almost exclusively adheres to spoken English. So  
[15] the answer there would be yes. But you would  
[16] really have to make some kind of reference to  
[17] specific linguistic features in order to answer  
[18] that question in any particular instance. Is the  
[19] loss of the postvocalic R in a word such as park  
[20] or butter, if this becomes pahk and buttuh, is it  
[21] standard English or not, standard American  
[22] English or not?

[23] Well, it's sort of standard regional  
[24] pronunciation. The written form is standard  
[25] everywhere because the R is always put in.

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**Butters**

[1] Whether you say economics or economics, is simply  
[2] linguistic variation that is not related to  
[3] dialect. So it's a complex issue.

[4] **Q:** Can a term at once be offensive but  
[5] also still be considered standard English?

[6] **A:** Well, again, to give you the answer  
[7] that I gave earlier, virtually any term can be  
[8] offensive under the right circumstances.

[9] **THE WITNESS:** Is there some water in  
[10] here?

[11] (Recess taken.)

[12] **Q:** In your professional opinion, can a  
[13] word in the dictionary that has a usage label  
[14] offensive, nevertheless, be standard English?

[15] **A:** Yes.

[16] **Q:** Would it be standard English to say,  
[17] There are several Hispanics living in the  
[18] neighborhood now?

[19] **A:** To say - I think yes.

[20] **Q:** Would it be standard English to say,  
[21] There are several redskins living in the  
[22] neighborhood now?

[23] **A:** Yes.

[24] **Q:** You testified earlier concerning how  
[25]

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**Butters**

[1] you would define the term disparaging, and I  
[2] don't believe I've covered this, but how would  
[3] you define the word offensive?

[4] **A:** Offensive is - let me start by saying  
[5] the word offensive has to do with the recipient  
[6] or the hearer. And an offensive term is a term  
[7] which - to which the hearer would or could or  
[8] does, I think is probably the best verb, take  
[9] offense, finds in some sense demeaning, a sense  
[10] of disparaging intent, too.

[11] **Q:** Is it your belief that some words are  
[12] intrinsically offensive?

[13] **A:** No word is intrinsically anything.  
[14] There are some words that - let me stop and  
[15] rephrase that.

[16] The scale of offensiveness is a cline  
[17] like most things in life, and some things are  
[18] almost never used in an offensive manner. Some  
[19] words are used almost inevitably in an offensive  
[20] manner. I can give you a few examples if you'd  
[21] like.

[22] **Q:** Please.

[23] **A:** The word kike is a word that should be  
[24] labeled disparaging because it's virtually  
[25]

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**Butters**

[1] impossible to use it except in the quotative  
[2] context that I just gave without intending to get  
[3] offensive. Nobody is going to name a street in a  
[4] town Kike Street. Nigger is a similar term.

[5] **Q:** And, in your view, those should bear  
[6] usage labels offensive -

[7] **A:** Disparaging.

[8] **Q:** Disparaging. Okay.

[9] **A:** Nobody is going to name a street in  
[10] Durham, North Carolina Nigger Street. There was  
[11] a time when a region of my hometown at Cedar  
[12] Rapids, Iowa was called Nigger Town, but nobody  
[13] put up a sign Nigger Town. And today nobody -  
[14] well, I'm not sure that nobody in Cedar Rapids,  
[15] Iowa would say that. It's, nonetheless, a  
[16] disparaging term almost inevitably when used.

[17] There are - on the other hand, there  
[18] are streets all over the country named Redskin  
[19] Trail and Redskin Road and that sort. So there's  
[20] a definite cline of offensiveness which clearly  
[21] does not - you know, includes some words and  
[22] excludes others.

[23] **Q:** What about the terms fag or faggot as  
[24] applied to gays, offensive, in your professional  
[25]

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*Butters*

- [1]  
[2] opinion?  
[3] **A:** I think most homosexuals would take –  
[4] it's a term that's applied only to men as far as  
[5] I know – would take offense at this term under  
[6] most circumstances. And it's generally used  
[7] disparagingly. There are no Faggot Streets in  
[8] New York City.  
[9] **Q:** In your professional opinion, should a  
[10] dictionary contain a usage label for those terms,  
[11] usage label offensive or disparaging?  
[12] **A:** I should qualify all of these  
[13] responses I'm giving you in this way: I'm not  
[14] presently in the circumstance of actually having  
[15] to put these things in a dictionary, and I would  
[16] want to give a good deal of thought to it  
[17] before – but, provisionally, my first  
[18] professional impulse would be to label faggot  
[19] derogatory.  
[20] **Q:** Would it surprise you if I told you  
[21] that Webster's 3rd did not have it labeled as  
[22] such and only had it labeled slang?  
[23] **A:** I believe, in fact – well, I thought  
[24] Webster's 3rd had labeled it offensive, but  
[25] perhaps I'm wrong about that. But this

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*Butters*

- [1]  
[2] doesn't – I'm not shocked. I think it probably  
[3] should be changed, but – see, the job of the  
[4] dictionary is to set up red flags and – with  
[5] respect to these labels. And they don't have  
[6] much space. You can't put a usage label on  
[7] everything, so they stick something on there and  
[8] it's not always, perhaps, just the best choice.  
[9] They're constantly revising these things.  
[10] **Q:** So is it fair to say labeling in  
[11] dictionaries is not entirely correct, in your  
[12] opinion?  
[13] **A:** Oh, yes.  
[14] **Q:** Usage labels?  
[15] **A:** Nobody is perfect. Even lawyers make  
[16] mistakes. This whole business of ethnic and  
[17] other sorts of meaning labels is very new.  
[18] They're still refining that process.  
[19] **Q:** In your professional opinion, what is  
[20] the meaning of the term scandalous?  
[21] **A:** Scandalous – a one-word synonym for  
[22] this is shocking. Scandalous generally applies  
[23] to large chunks of material. You can have a  
[24] scandalous newspaper story or a scandalous  
[25] story. A scandalous expose, I believe, the

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*Butters*

- [1]  
[2] American Heritage Dictionary uses as an example.  
[3] Scandalous is hard to imagine in the context of a  
[4] single word. A scandalous word is not quite  
[5] semantically well-formed. It's like colorless  
[6] ideas. It's not – a scandalous word – well,  
[7] it's a reach.  
[8] **Q:** In your professional opinion, did the  
[9] word scandalous have a different meaning in the  
[10] first decade of this century?  
[11] **A:** The first decade of the century? Not  
[12] to my knowledge.  
[13] **Q:** Earlier in the century, same question?  
[14] **A:** I haven't researched the history of  
[15] the word scandalous, but I'm recalling a 17th  
[16] century – a 17th century or an 18th century play  
[17] called a "School For Scandal". The term was used  
[18] very prominently in the literature of the 18th  
[19] century in ways that, in my memory as a literary  
[20] scholar, are not substantially different. But I  
[21] haven't researched it.  
[22] **Q:** Do you have a professional opinion as  
[23] to what the word scandalous means when used in  
[24] the context of the trademark law?  
[25] **A:** No, nothing more than what I've

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*Butters*

- [1]  
[2] already said, I guess. I think an image could be  
[3] scandalous, perhaps a trademark of a bare breast,  
[4] perhaps. This would be – this would accord with  
[5] my sense of what the term scandalous means in  
[6] American English, images or stories.  
[7] **Q:** Is it your testimony that any word can  
[8] be used disparagingly because disparagement  
[9] depends on the circumstances? Is that a fair  
[10] statement?  
[11] **A:** Yes.  
[12] **Q:** Can the word lawyer be used in a  
[13] disparaging manner, in your opinion?  
[14] **A:** Yes.  
[15] **Q:** Can the word shyster be used in a  
[16] disparaging manner when applied to lawyers?  
[17] **A:** Yes.  
[18] **Q:** Now, on the issue of disparagement, in  
[19] your professional opinion, is there a difference  
[20] between use of the word lawyer and use of the  
[21] word shyster?  
[22] **A:** Definitely.  
[23] **Q:** In your professional opinion, on the  
[24] issue of disparagement, is there a difference  
[25] between the term Native American and the term

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*Butters*

- [1] *Butters*  
[2] **redskin?**  
[3] **A:** Yes.  
[4] **Q:** And what is that difference?  
[5] **A:** There's a connotative difference and  
[6] there's a referential difference.  
[7] **Q:** What is the connotative difference?  
[8] **A:** Let me start with the referential  
[9] difference first because that's the easiest and  
[10] quickest. The term **redskin** in contemporary  
[11] American English refers to the football team, the  
[12] Washington Redskins, and has nothing  
[13] substantially to do with Native Americans.  
[14] The term **redskin** as applied to Native  
[15] Americans has a connotative difference from the  
[16] term **Native American** and from the term **Indian**,  
[17] and it is the least formal of those three.  
[18] **Q:** Does it have negative connotations,  
[19] more negative connotations than **Native American**?  
[20] **A:** In very recent years for some speakers  
[21] under some circumstances – the answer to that  
[22] question is yes, but only under – but only for  
[23] some speakers under some circumstances in very  
[24] recent years.  
[25] **THE WITNESS:** I need another break.

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*Butters*

- [1] *Butters*  
[2] **MR. AARON:** Sure.  
[3] (Recess taken.)  
[4] **Q:** Professor Butters, I'd like to hand  
[5] you what was marked at yesterday's deposition of  
[6] Mr. Barnhart as Barnhart Exhibit 5. It's labeled  
[7] at the top, "Report on the History and  
[8] Sociolinguistic Significations of the term  
[9] Redskins and Related Words in American English",  
[10] dated June 7, 1996.  
[11] Professor Butters, can you identify  
[12] that document, please?  
[13] **A:** It looks complete, yes.  
[14] **Q:** That is a report you prepared in  
[15] connection with this litigation?  
[16] **A:** Yes.  
[17] **Q:** I'd like to refer you to the end of  
[18] paragraph 6 on page 3, and in particular the  
[19] sentence that says, and I quote, In this  
[20] longstanding traditional meaning, the term **red**,  
[21] which is underlined, as a skin-color designator  
[22] merely parallels the use of the other biological  
[23] and anthropological classifiers **white**, which is  
[24] underlined, **black**, which is underlined, and  
[25] **yellow**, which is underlined, and has no negative

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*Butters*

- [1] *Butters*  
[2] connotations whatsoever.  
[3] My question with regard to that  
[4] passage, Professor Butters, is this: Are you  
[5] familiar with the term **yellow bellies** as applied  
[6] to persons of Asia descent?  
[7] **A:** It's not a very common term in my  
[8] memory.  
[9] **Q:** Have you heard it?  
[10] **A:** I haven't – I'm not sure whether I've  
[11] heard it. I certainly haven't researched it.  
[12] **Q:** In your professional opinion, does  
[13] that term have negative connotations when applied  
[14] to –  
[15] **A:** The first thing that comes to my mind  
[16] are **yellow belly sapsuckers**, which is a bird and  
[17] has no negative connotations in that context. I  
[18] think to refer to someone of, say, Chinese  
[19] descent as a **yellow belly** would – would seem for  
[20] the nonce, at least, potentially offensive.  
[21] **Q:** I missed that earlier phrase, for  
[22] the –  
[23] **A:** Nonce.  
[24] **Q:** I guess I'm not –  
[25] **A:** NO-NCE.

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*Butters*

- [1] *Butters*  
[2] **Q:** What does what mean?  
[3] **A:** A nonce term is one that someone sort  
[4] of makes up on the spot.  
[5] **Q:** I'd like to refer you, please, to  
[6] paragraph 12 of your report on page 5. That  
[7] section is entitled, "Usage Labels are subject to  
[8] sociopolitical pressure."  
[9] My question with regard to this  
[10] section of the report is this: Are you aware of  
[11] any efforts that were made to pressure dictionary  
[12] editors to label the term **redskin** as offensive?  
[13] **A:** I'm not personally acquainted with any  
[14] particular instances of this sort. And the  
[15] answer that – perhaps you should clarify the  
[16] question. You mean, do I know of anybody calling  
[17] up the editor of a dictionary and saying, hey,  
[18] you better start labeling **redskin** offensive? I  
[19] certainly don't know of any instances of that  
[20] sort.  
[21] **Q:** And have you ever heard that  
[22] happening –  
[23] **A:** Not – not in that specific way, no.  
[24] **Q:** – in any more general way?  
[25] **A:** Well, as I suggested earlier, you

Page 61

**Butters**

[1]  
[2] know, beginning in the 1980s, in the literature  
[3] one does begin to see references by scholars  
[4] saying we better be careful about this term  
[5] redskin, too, because - not linguistic scholars,  
[6] but, say, sociologists or historians or  
[7] anthropologists. I've seen a few references of  
[8] that sort. That's the sort of thing I mean by  
[9] sociopolitical pressure or the kind of thing one  
[10] sees in the newspaper article, mostly kind of  
[11] cautionary words.  
[12] I think I explained this further in  
[13] this paragraph in quoting Sidney Landau, who  
[14] talks about the decision to label a word  
[15] offensively and Robert Burchfield's article which  
[16] is "Dictionaries and Ethnic Sensibilities" 1980  
[17] in which I actually discuss some specific  
[18] instances of actual pressure brought to bear upon  
[19] him as the editor of the dictionary - of the  
[20] Oxford English Dictionary with respect to certain  
[21] ethnic terms. So -  
[22] Q: Is it your contention that Burchfield  
[23] believes that dictionary editors have wrongly  
[24] included labels for a particular word as  
[25] offensive?

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**Butters**

[1] A: That's my inference.  
[2] Q: Is it also your inference with respect  
[3] to Burchfield that it's his view that, in some  
[4] instances, there's been a failure to include  
[5] usage labels by dictionary editors when they  
[6] would have been warranted?  
[7] A: I can make no such inference as that  
[8] from his article, no.  
[9] Q: So, from his article, the inference  
[10] you draw only is that such labels had been  
[11] wrongfully included or improperly included; is  
[12] that right?  
[13] A: Yes.  
[14] Q: In your professional opinion, are  
[15] there dictionary editors that disagree with that  
[16] view, with Burchfield's view?  
[17] A: I've seen nothing in print in which  
[18] Burchfield's article is specifically challenged.  
[19] I have no information.  
[20] Q: With respect to Sidney Landau, are you  
[21] saying that Landau believes that, in some  
[22] instances, dictionary editors will label a word  
[23] as offensive solely as a response to political  
[24] pressure?  
[25]

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**Butters**

[1]  
[2] A: Not solely as a response to political  
[3] pressure.  
[4] Q: In part?  
[5] A: Yes.  
[6] Q: And, in your professional opinion,  
[7] does Landau believe that dictionary editors will  
[8] supply usage labels that are not warranted on the  
[9] grounds of actual usage?  
[10] A: Repeat the question, please.  
[11] Q: In your professional opinion, does  
[12] Landau believe that dictionary editors will  
[13] supply usage labels that are not warranted on the  
[14] ground of actual usage?  
[15] A: That arguably are not warranted on the  
[16] grounds of -  
[17] Q: Are you aware of dictionary editors  
[18] that have succumbed to sociopolitical pressures,  
[19] specific instances of that occurring?  
[20] A: By inference.  
[21] Q: But not by specific example?  
[22] A: Well, I - my - my inference is that  
[23] any dictionary that labels redskin as a  
[24] derogatory term is doing so, at least indirectly,  
[25] as a result of, at least in large part, of

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**Butters**

[1] sociopolitical pressure.  
[2] MR. AARON: Could I have that answer  
[3] read back.  
[4] (Record read.)  
[5] Q: Am I correct when you were referring  
[6] to sociopolitical pressure, in that context  
[7] you're not necessarily referring to someone  
[8] calling up a dictionary editor and saying, change  
[9] that, correct?  
[10] A: Right.  
[11] Q: You're referring to something -  
[12] A: Correct.  
[13] Q: - broader?  
[14] A: Yes, sir.  
[15] Q: How would you describe the  
[16] sociopolitical pressure that has caused  
[17] dictionary editors to label redskin as offensive?  
[18] A: This is usually characterized in  
[19] recent years with the cover term political  
[20] correctness. I don't like the phrase political  
[21] correctness movement because that suggests  
[22] there's a group of people somewhere who sat down  
[23] and decided that they were going to change the  
[24] language.  
[25]

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**Butters**

[1] [2] I don't - and I don't think it's that  
[3] simple, but I do think there has been a sense in  
[4] recent years that has so gathered momentum  
[5] that - I've lost my train of thought now.  
[6] **THE WITNESS:** Would you read the first  
[7] part of my answer back?  
[8] (Record read.)  
[9] **A:** All right. What I object to in the  
[10] phrase political correctness movement is the  
[11] notion of movement, that is, it's not a  
[12] conspiracy, it seems to be more a general kind of  
[13] temper of the times to be exceedingly punctilious  
[14] about the use of language that might, in any way,  
[15] offend anybody.  
[16] **Q:** So by "sociopolitical pressure",  
[17] you're referring to this political correctness  
[18] trend; is that a fair statement?  
[19] **A:** Yes.  
[20] **Q:** Does Landau, in his writings, give  
[21] examples of dictionary editors that have  
[22] succumbed to the sociopolitical pressures?  
[23] **A:** I don't remember.  
[24] **Q:** What about Burchfield, do you recall  
[25] whether he does?

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**Butters**

[1] [2] **A:** My memory is that Burchfield uses some  
[3] specific examples of terms that he receives some  
[4] pressure about, but I can't remember what those  
[5] terms were.  
[6] **Q:** In your opinion, are the dictionary  
[7] editors' responses to such sociopolitical  
[8] pressures unjustified or unwarranted by actual  
[9] usage?  
[10] **A:** In certain specific instances, I  
[11] believe so.  
[12] **Q:** And in respect of the term *redskin*,  
[13] labeling of the term *redskin* as offensive?  
[14] **A:** This is - this is the example,  
[15] obviously, that I've been concentrating my  
[16] attention on in recent months and my way to that  
[17] question would be yes.  
[18] **Q:** In your professional opinion, if a  
[19] survey indicated that 100 percent of Native  
[20] Americans believe that the term *redskin* is  
[21] offensive, would that be sufficient evidence to  
[22] include a label of that word as offensive usage  
[23] label?  
[24] **A:** Well, not necessarily. There are bad  
[25] surveys.

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**Butters**

[1] [2] **Q:** 100 percent of Indians believe - this  
[3] is a hypothetical, obviously. In your  
[4] professional opinion, if 100 percent of American  
[5] Indians believe that the term *redskin* is  
[6] offensive, should a usage label be applied of  
[7] offensive to that term?  
[8] **A:** If a survey were conducted that  
[9] convinced me that 100 percent of Native Americans  
[10] consider the term *redskin* offensive, this would  
[11] be grounds for considering placing such a usage  
[12] label upon such a term in a dictionary provided  
[13] that I clearly understood what the contexts were  
[14] in which the Native Americans found this term  
[15] offensive. And that, of course, you're leaving  
[16] just wide open.  
[17] And, again, there are - it certainly  
[18] would be possible to conduct a survey in which  
[19] 100 percent of all lawyers found the term *lawyer*  
[20] to be offensive.  
[21] **Q:** What about a simple majority, you did  
[22] your survey and a simple majority of Native  
[23] Americans find the term to be offensive. Would  
[24] you consider putting a usage label of offensive  
[25] on the term, in your professional opinion?

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**Butters**

[1] [2] **A:** It seems to me that, given the  
[3] importance of Native Americans' American history  
[4] and the wrongs that have been done to them, that  
[5] more than just a simple usage label would be  
[6] required if one were going to do it.  
[7] That is, I think a usage note would  
[8] probably be much more appropriate. And whether  
[9] it's 51 percent or 100 percent or only 5 percent  
[10] is something that one would want to take into  
[11] consideration of prompting you to write such a  
[12] usage note.  
[13] But, again, the circumstances under  
[14] which the term would be used would be very  
[15] important in coming to this kind of conclusion.  
[16] **Q:** In your professional opinion, is the  
[17] term *Chink* when applied to a person of Chinese  
[18] ancestry offensive?  
[19] **A:** *Chink* is one of those words at the far  
[20] end of the spectrum, along with *kike* and *nigger*.  
[21] And I think that whatever I've said about *kike*  
[22] and *nigger* would apply pretty closely to *Chink* as  
[23] well.  
[24] **Q:** That they're disparaging terms, is  
[25] that fair?

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*Butters*

[1] *Butters*  
[2] A: Chink is a term that is almost  
[3] invariably used in a disparaging way. Again,  
[4] without - with a proviso that I would need to do  
[5] further research upon it. To do it in a  
[6] responsible way, I think that, most likely, I  
[7] would want to put a usage label of derogatory on  
[8] the word such as Chink.  
[9] Q: And what about gook as applied to  
[10] persons of Chinese ancestry?  
[11] A: One of the things you have to be very  
[12] careful about with these words is gook, Chink and  
[13] Nip, which probably also fits into that end of  
[14] the spectrum somewhere is that they also have  
[15] other uses and meanings as well, and that the use  
[16] in other contexts is certainly not  
[17] objectionable. If a professor says, there's a  
[18] little nip in the air today, I don't -  
[19] Q: Obviously, we're talking about -  
[20] A: - think Japanese Americans should  
[21] take offense.  
[22] Q: But when applied to those persons,  
[23] then the answer is different, isn't that right,  
[24] persons that fit within - persons of Asian  
[25] ancestry?

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*Butters*

[1] *Butters*  
[2] A: Always with the proviso that you and I  
[3] as native speakers of English know, and that is  
[4] almost any word can be used in certain  
[5] circumstances in a non-offensive, non-derogatory  
[6] way.  
[7] Q: In your professional opinion, is there  
[8] a difference in denotation between the term Chink  
[9] and the term gook?  
[10] A: A denotation?  
[11] Q: Yes.  
[12] A: I haven't researched these terms. I  
[13] don't have a professional opinion about that.  
[14] Q: What about, do you have a professional  
[15] opinion as to whether there's a difference in  
[16] those terms in connotation?  
[17] A: No.  
[18] Q: You'd have to study it, is that right,  
[19] in order to have an opinion, study the use of  
[20] those terms in the primary sources?  
[21] A: I'd like to do that before I gave you  
[22] any professional opinion about those terms.  
[23] (Recess taken.)  
[24] Q: In paragraph 15 of your report,  
[25] Professor Butters, on page 7, you make reference

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*Butters*

[1] *Butters*  
[2] to a search of several on-line bibliographies and  
[3] other resources having turned up over 300 entries  
[4] for redskin or redskins. Do you see that?  
[5] A: Yes.  
[6] Q: In the materials that are being  
[7] copied, is there some sort of document that shows  
[8] the results of this search?  
[9] A: Yes. As I recall, in fact, they're  
[10] numbered from 1 to 334 or something like that.  
[11] It was, I believe, a Library of Congress catalog  
[12] search. I'm not positive about that, but these  
[13] 300 entries are all in the materials that you  
[14] received.  
[15] Q: I'd like to just put the question on  
[16] that off until after the lunch break.  
[17] As part of paragraph 15, you discuss  
[18] an article by a fellow Rahv, R-A-H-V?  
[19] A: Yes.  
[20] Q: In that article, does Rahv, to your  
[21] recollection, refer to Whitman as a redskin?  
[22] A: Yes.  
[23] Q: And, in your professional opinion, is  
[24] it respectful of Whitman to call him a redskin?  
[25] A: Yes.

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*Butters*

[1] *Butters*  
[2] Q: And does he also, in that article,  
[3] refer to Emerson as a paleface?  
[4] A: I can't remember if Emerson is one of  
[5] the palefaces. That would be a logical -  
[6] Q: Is it respectful of an author to call  
[7] him a paleface, in your opinion?  
[8] A: Yes. Henry James is a paleface, as  
[9] you might have guessed.  
[10] Q: Do you consider Sidney Landau an  
[11] authoritative source in lexicology?  
[12] A: Lexicography? Very definitely.  
[13] Q: And what about Burchfield?  
[14] A: Yes.  
[15] Q: And what about Irving Louis Allen?  
[16] A: Irving Louis Allen is a sociologist, I  
[17] believe, who has given some thought to language,  
[18] written a couple of books about ethnic labeling.  
[19] Q: Is he a reliable source, primary  
[20] source?  
[21] A: In his scholarly works, yes. I don't  
[22] always agree with him about everything, but Allen  
[23] is certainly a respectable scholar.  
[24] Q: We looked earlier at the report of  
[25] Professor Nunberg. Prior to your work in

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**Butters**

- [1] connection with this matter, did you know  
[2] Professor Nunberg or his work?  
[3] **A:** I believe that years ago I saw a copy  
[4] of his dissertation which, as I recall, was on  
[5] the study of pragmatics. I don't remember much  
[6] about it.  
[7] He has also written fairly frequently  
[8] in the Popular Press. I believe he had an  
[9] article in the Atlantic Monthly a number of years  
[10] ago which I remember reading. And, of course,  
[11] I've read his prefatory material to the American  
[12] Heritage Dictionary, the collegiate edition.  
[13] And, in fact, Xerox copies of that are in the  
[14] materials that you're currently duplicating. So  
[15] you can see Professor Nunberg's work yet again.  
[16] **Q:** Do you have an opinion as to Professor  
[17] Nunberg's reputation?  
[18] **A:** Yes.  
[19] **Q:** And what is that opinion?  
[20] **A:** I have nothing disrespectful to say  
[21] about his professional opinion - his  
[22] professional reputation as a scholar of the  
[23] English language in general.  
[24] **Q:** Do you consider him a good linguist?  
[25]

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**Butters**

- [1] **A:** Yes.  
[2] **Q:** And is he an expert in the field of  
[3] linguistics?  
[4] **A:** Yes.  
[5] **Q:** Actually, I have one more question  
[6] about your report and then I just want to turn to  
[7] Nunberg's. It's one that I forgot.  
[8] In your report in paragraph 18 on the  
[9] bottom of page 10 and the top of page 11, there's  
[10] a sentence that reads, In short, the history of  
[11] the actual usage of redskin(s), underlined,  
[12] indicates that the word has always been, and  
[13] continues to be, for the vast majority of  
[14] speakers of American English a neutral synonym  
[15] for - and this is underlined as well - American  
[16] Indian.  
[17] Am I correct, then, that there is a  
[18] minority of speakers of the American English  
[19] language for whom redskin is not a neutral  
[20] synonym for American Indian?  
[21] **A:** Well, I think, if that weren't the  
[22] case, we wouldn't have a lawsuit.  
[23] **Q:** So the answer to my question is yes?  
[24] **A:** Yes.  
[25]

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**Butters**

- [1] **Q:** I'd like to refer, please, back to  
[2] Professor Nunberg's report which I will show you  
[3] that was marked as -  
[4] **A:** I have it. Exhibit 4?  
[5] **Q:** Yes. That was Exhibit 4 from  
[6] yesterday's deposition of Mr. Barnhart. And I  
[7] believe we've covered this, but you have read  
[8] Professor Nunberg's report subsequent to the  
[9] preparation of yours?  
[10] **A:** Yes, I have.  
[11] **Q:** Do you agree with the conclusions  
[12] reached by Professor Nunberg?  
[13] **A:** In general, no.  
[14] **Q:** Could you please explain for me your  
[15] areas of disagreement?  
[16] **A:** I wish I had my copy of his report  
[17] because I had made some notes in the margins.  
[18] **Q:** That's fair. Why don't we then put  
[19] off this inquiry until the afternoon when I will  
[20] be able to provide you your copy.  
[21] **A:** That would be very helpful, thank you.  
[22] **Q:** Did you have any discussions with the  
[23] lawyers from White & Case concerning Professor  
[24] Nunberg's deposition?  
[25]

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**Butters**

- [1] **A:** Yes.  
[2] **Q:** What was the substance of those  
[3] discussions?  
[4] **A:** We discussed the - my criticisms of  
[5] the report.  
[6] **Q:** That was before the deposition?  
[7] **A:** Before his deposition.  
[8] **Q:** Before his deposition took place?  
[9] **A:** Yes.  
[10] **Q:** Subsequent to his deposition, to  
[11] Professor Nunberg's deposition, did you have any  
[12] discussions concerning Professor Nunberg's  
[13] testimony?  
[14] **A:** Yes.  
[15] **Q:** Okay. Have you been provided a copy  
[16] of the transcript of Professor Nunberg's  
[17] deposition?  
[18] **A:** No. Of his deposition?  
[19] **Q:** Right.  
[20] **A:** No, I have not.  
[21] **Q:** Other than the attorneys from White &  
[22] Case, have you had discussions with anyone  
[23] concerning the subject matter of this case?  
[24] **A:** Personal discussions?  
[25]

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**Butters**

- [1]  
[2] **Q:** And other than you did identify some  
[3] persons earlier with whom you had E-mail  
[4] communication.  
[5] **A:** Right.  
[6] **Q:** Other than those persons, has there  
[7] been anyone else?  
[8] **A:** Spoken?  
[9] **Q:** Spoken or in writing.  
[10] **A:** Nothing else in writing that I can  
[11] think of. I did ask my son-in-law, what does  
[12] redskin mean to you, and he said the Washington  
[13] football team. That's - I had that response  
[14] from several other people. That's been mostly  
[15] very, you know, casual conversations of some  
[16] sort. The answer has always been the Washington  
[17] Redskins football team.  
[18] **Q:** I'd like to show you a document that  
[19] was marked in yesterday's deposition of  
[20] Mr. Barnhart as Barnhart Exhibit 11. It's a  
[21] document, the cover of which is a June 15, 1996  
[22] memorandum from Professor Nunberg to Michael  
[23] Lindsay at Dorsey & Whitney. My question is  
[24] whether you've seen that document before today.  
[25] **A:** No. I certainly haven't seen the

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**Butters**

- [1]  
[2] first page, anyway. No, I've seen none of this  
[3] before.  
[4] **Q:** I'd like you to please take a few  
[5] minutes, and this is going to be my last area of  
[6] inquiry before the break, but take a few minutes  
[7] and read this document and I have a few questions  
[8] about it.  
[9] **A:** (Reading.) All right, I've read  
[10] through it.  
[11] **Q:** Are you familiar with the database  
[12] known as Dialog Information Services?  
[13] **A:** Not specifically by name. That  
[14] doesn't - there are a number of these  
[15] information services around and they, more or  
[16] less, do the same thing.  
[17] **Q:** Did you agree or disagree with the  
[18] conclusion reached by Professor Nunberg in this  
[19] exhibit?  
[20] **A:** Which conclusions?  
[21] **Q:** Specifically the last paragraph on  
[22] page 6.  
[23] **A:** I think this is a misleading  
[24] conclusion.  
[25] **Q:** And why is that?

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**Butters**

- [1]  
[2] **A:** Well, several points I have to make  
[3] about this. In his definition of neutral  
[4] synonym, he is asking, really, for the  
[5] impossible, and that is that - and, as a  
[6] linguist, I find this somewhat surprising. He's  
[7] asking that, in order for a word to be synonymous  
[8] with another word, that it should mean exactly  
[9] the same thing and have exactly the same usage.  
[10] I've never maintained that, at any  
[11] point in time, much less today. Redskin and  
[12] Indian are precisely synonymous in the sense that  
[13] redskin has always been a somewhat less formal  
[14] word than Indian, just as Indian is a somewhat  
[15] less formal word than Native American.  
[16] But - so that the fact that redskin  
[17] and American Indian or Indian have not been used  
[18] interchangeably simply means redskin has not been  
[19] a neutral synonym for - neutral with respect to  
[20] a pejorative nature of the connotations of the  
[21] word. I'm thinking neutral in the sense of the  
[22] cline that we spoke about earlier.  
[23] **Q:** Isn't redskin somewhat more derogatory  
[24] than Native American?  
[25] **A:** No.

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**Butters**

- [1]  
[2] **Q:** So, in that sense, you believe it's a  
[3] synonym - with respect to the issue of whether  
[4] it's derogatory or not, you think Native American  
[5] and redskin have equal standing, so to speak?  
[6] **A:** Neither one is a derogatory term.  
[7] **Q:** Ever in history?  
[8] **A:** I have to say, again, what I've said a  
[9] number of times, and that is, any word in -  
[10] within the proper context can be used in a  
[11] derogatory manner. And any word can be taken  
[12] offensively under the proper circumstances.  
[13] **Q:** But in your research of the primary  
[14] sources, you never found an instance where the  
[15] word redskin was used in a derogatory manner,  
[16] correct?  
[17] **A:** Where the word redskin, per se, was  
[18] the cause of the - of the derogatory nature of  
[19] the utterance. We're really dealing with written  
[20] material so I shouldn't say - I should say the  
[21] passage.  
[22] **MR. AARON:** Now I think is a good time  
[23] to break. And why don't we go off the  
[24] record.  
[25] (Luncheon recess: 11:55 a.m.)



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[1]  
[2] **AFTERNOON SESSION**  
[3] (Time noted: 2:00 p.m.)  
[4] RONALD R. BUTTERS, resumed and  
[5] testified as follows:  
[6] DIRECT EXAMINATION (Cont'd.)  
[7] **BY MR. AARON:**  
[8] **Q:** Professor Butters, your counsel  
[9] yesterday had provided to me two file boxes of  
[10] documents that were photocopied and two stacks  
[11] are sitting on the conference room table. I  
[12] understand right when we started the lunch break  
[13] you had an opportunity to flip through those  
[14] copies.  
[15] Are those materials that are sitting  
[16] here in two piles on the conference room table,  
[17] to the best of your knowledge, copies of the  
[18] articles and press guides that were provided to  
[19] you by White & Case?  
[20] **A:** And programs, yes.  
[21] **Q:** Did you read those materials in  
[22] connection with preparation of your report?  
[23] **A:** I read some of those materials.  
[24] **Q:** Did you rely upon those materials in  
[25] reaching the conclusions set forth in your

Page 82

[1] **Butters**  
[2] report?  
[3] **A:** In truth, not substantially. I  
[4] glanced - I looked at those first, really,  
[5] before I did any further research. And it was my  
[6] own research that I relied on almost exclusively  
[7] for the substance of my report.  
[8] **Q:** And when you say your own materials,  
[9] am I correct that those materials are included or  
[10] at least referenced in the materials that you  
[11] produced here today?  
[12] **A:** Yes.  
[13] **Q:** I suppose what I'd like to do first is  
[14] go through the materials that are not in the two  
[15] folders. And it's my understanding that these  
[16] materials are ones that you gathered subsequent  
[17] to the preparation of your report?  
[18] **A:** That is correct.  
[19] **Q:** Okay. Let me hand you the originals  
[20] of those.  
[21] **A:** Thank you.  
[22] **Q:** And for the time being, I'm not going  
[23] to mark them, but perhaps the two of us can flip  
[24] through the materials and, if I have some  
[25] questions, then perhaps I'll mark the appropriate

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[1] **Butters**  
[2] document.  
[3] The first document on top appears to  
[4] be an excerpt from a book "Ohitika Woman",  
[5] O-H-I-T-A-K-A. Why did you copy these excerpts  
[6] or have these excerpts copied in connection with  
[7] this matter?  
[8] **A:** The pages that are copied are all -  
[9] or nearly all pages on which Mary Brave Bird, the  
[10] author of "Ohitika Woman", uses the term  
[11] redskins, skins - I'm sorry - uses the term  
[12] redskin or the term skin as a means of  
[13] self-reference, Mary Brave Bird being a  
[14] self-described activist Native American.  
[15] And in this work she uses the word  
[16] skins a number of times, redskins at least once.  
[17] There are a couple of other passages that I  
[18] marked as well that seem to be of some relevance,  
[19] red people and so on.  
[20] **MR. AARON:** Why don't we have my copy  
[21] of this marked as the next exhibit, which I  
[22] guess is Butters Exhibit 3.  
[23] (Butters Exhibit 3, Excerpt from a  
[24] book "Ohitika Woman", marked for  
[25] identification, as of this date.)

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[1] **Butters**  
[2] **Q:** The next document in the stack is a  
[3] document entitled, "Freedom and Restrictions in  
[4] Language Use" written by Roy C. O'Donnell at the  
[5] University of Georgia. Why did you obtain a copy  
[6] of this report in connection with this matter?  
[7] **A:** This was an article that  
[8] Professor O'Donnell sent me some time ago. I  
[9] can't even remember why he sent it. I came upon  
[10] it recently in looking for some other materials,  
[11] and I thought this might possibly have some  
[12] bearing on the issue and, therefore, I read it.  
[13] **Q:** And -  
[14] **A:** And since I had read it thinking it  
[15] might have some bearing on the issue at hand,  
[16] why, I thought I should include it with the  
[17] materials that I presented today.  
[18] **Q:** And does it have bearing on your  
[19] opinion?  
[20] **A:** I read it rather quickly, and I'm not  
[21] even sure at this point what bearing it might  
[22] have. I marked a passage on page 25 in which  
[23] Mr. O'Donnell quotes someone on the issue of  
[24] political correctness. "A lot of folks are  
[25] starting to get sensitive about sensitivity", and

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**Butters**

- [1]  
[2] he refers to complaints about the sensitivity  
[3] police on the prowl these days making sure that  
[4] only politically thought is given voice.  
[5] **MR. AARON:** Why don't we have that  
[6] marked as the next exhibit in order which is  
[7] Exhibit 4.  
[8] (Butters Exhibit 4, Document entitled,  
[9] "Freedom and Restrictions in Language  
[10] Usage", marked for identification, as of  
[11] this date.)  
[12] **Q:** The next document in the stack is  
[13] entitled at the top, "Dictionaries and Labeling  
[14] of Words Offensive to Groups" with particular  
[15] attention to the second edition of the OEC. It  
[16] says that it's by John McCluskey,  
[17] M-C-C-L-U-S-K-E-Y.  
[18] Why was this article included among  
[19] the materials?  
[20] **A:** This was one of the articles that  
[21] Mr. Barnhart referenced in his report and which I  
[22] hadn't looked at in preparing my report. And I  
[23] thought I should look at it. And then I  
[24] remembered, actually, Professor McCluskey had  
[25] sent me a copy of this paper prior to its

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**Butters**

- [1] publication in the Journal Dictionaries. So I  
[2] dug it out of the file to look at it, remembering  
[3] that he had told me that there was a table in  
[4] this article which was not actually - was not -  
[5] did not end up getting published, I think,  
[6] because of reasons of space. So I reread this  
[7] article as well. I read it primarily because it  
[8] was in Barnhart's report.  
[9] **Q:** Do you know the year that this article  
[10] was published or the publication in which it  
[11] appeared?  
[12] **A:** It appeared in the Journal  
[13] Dictionaries. The exact reference is in  
[14] Mr. Barnhart's report.  
[15] **Q:** Okay.  
[16] **A:** I believe it's '91, but I'm not sure  
[17] about that. So I received this from the author,  
[18] I think, in 1990.  
[19] **Q:** Having recently reread this article  
[20] after preparation of your report, does this  
[21] article alter, in any way, the conclusions that  
[22] you reached in your report?  
[23] **A:** If anything, it reified them, I guess.  
[24] **Q:** Could you tell me what you mean by the

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**Butters**

- [1] word reified?  
[2] **A:** R-E-I-F-I-E-D. It firmed them up,  
[3] made them more solid. Particularly with  
[4] reference to page 6, as far back as 1968, a  
[5] United Nations group suggested that the words  
[6] primitive, savage, backward, bushman and native  
[7] all had racist connotations and advocated that  
[8] neutral terms be substituted for them.  
[9] And then Arnold Toynbee, the famous  
[10] historian, also had criticisms to make of the  
[11] term native. This seemed revealing in light of  
[12] the fact that Native American seems to be a  
[13] preferred term of self-address today. And it  
[14] seemed relevant, then, simply in that the word  
[15] native like the word redskin can sometimes, under  
[16] some circumstances, be perceived as objectionable  
[17] by some people.  
[18] **Q:** And the chart that's attached to  
[19] Mr. McCluskey's article under redskin shows the  
[20] differing treatment of the word in terms of usage  
[21] labels in dictionaries over time; is that  
[22] correct?  
[23] **A:** Yes, it's not nearly as complete as  
[24] Mr. Barnhart's survey in his report, but it

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**Butters**

- [1] does - it does also list redskin within the  
[2] context of some other terms including Jesuit,  
[3] faggot, hillbilly, Mohammanadan, pink and wetback.  
[4] **Q:** The RHU '87 column, is that Random  
[5] House?  
[6] **A:** I think so. I'd have to refer to the  
[7] key that he gives. RHU, Random House  
[8] Dictionaries 1987, unabridged, second edition.  
[9] **Q:** And that lists the word redskins as  
[10] disparaging and offensive. I take it, you  
[11] disagree with that usage label -  
[12] **A:** Yes.  
[13] **Q:** - in your professional opinion?  
[14] **A:** Yes.  
[15] **MR. AARON:** Let's have this article  
[16] marked, please, as the next Butters exhibit  
[17] in order which is Exhibit 5.  
[18] (Butters Exhibit 5, Document entitled,  
[19] "Dictionaries and Labeling of Words  
[20] Offensive to Groups, with Particular  
[21] Attention to the Second Edition of the OED",  
[22] marked for identification, as of this date.)  
[23] **Q:** The next group of material appears in  
[24] a clip. The top of it appears to be a front page

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**Butters**

- [1]  
[2] or - excuse me - the inside cover page of the  
[3] dictionary. And your handwriting says 10th  
[4] Collegiate?  
[5] **A:** Right.  
[6] **Q:** Could you describe for me what is  
[7] contained within this clip?  
[8] **A:** The front material from the Merriam  
[9] Webster 10th Collegiate which is a desktop  
[10] dictionary, college dictionary, and I Xeroxed the  
[11] front material there.  
[12] **Q:** And then after that there appear to be  
[13] pages from other dictionaries, correct?  
[14] **A:** Let me see. These pages are not  
[15] numbered, of course, but there is - I did also  
[16] Xerox here the page from that same dictionary in  
[17] which the entry redskin appears. Then comes the  
[18] Random House Unabridged Dictionary front  
[19] material. And the Stuart Berg Flexner's preface,  
[20] Jess Stein, the late Jess Stein's preface, the  
[21] section on usage by Tom Cresswell and Virginia  
[22] McDavid.  
[23] **Q:** Why did you include these materials?  
[24] **A:** Why? These were materials that I  
[25] looked at after I did my report and before coming

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**Butters**

- [1] to this deposition.  
[2] **Q:** Who is Stuart Flexner?  
[3] **A:** Stuart Flexner is a prominent  
[4] lexicographer who was editor in chief of the  
[5] Random House Dictionaries. I'm not sure that he  
[6] any longer is, but - I'm a little hazy about  
[7] that, about just who was in charge of it.  
[8] One of the chief reasons for including  
[9] this was the material under usage labels in which  
[10] they make the distinction between disparaging and  
[11] offensive which you'll see in the next to the  
[12] last page. And, essentially, what this does is  
[13] reifies my position on the difference between  
[14] disparaging and offensive as they use it in this  
[15] dictionary.  
[16] Disparaging indicates a term used with  
[17] disparaging intent, offensive is likely to be  
[18] perceived offensive by a listener or reader  
[19] whether or not any offense was intended. So  
[20] that's - it really just confirms my earlier  
[21] opinion.  
[22] **Q:** In Mr. Flexner's preface to the second  
[23] edition of the Random House Unabridged  
[24] Dictionary, there's a paragraph that I believe is

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**Butters**

- [1] highlighted in your original -  
[2] **A:** Yes.  
[3] **Q:** - that reads, "In addition, during  
[4] the past two decades, significant and influential  
[5] social and cultural movements have taken place  
[6] reverberating through our language not only as  
[7] new words and meaning but in our attitudes toward  
[8] language and its use." And then at the tail end  
[9] of that section talks about influences from  
[10] history itself and from social and cultural  
[11] movements as concerned with the environment, the  
[12] woman's movement and a new awareness and respect  
[13] for ethnic diversity.  
[14] Do you believe that that's what  
[15] Mr. Flexner is talking about is the reason why  
[16] redskin is treated in this dictionary and in  
[17] others as an offensive or derogatory term in the  
[18] usage label?  
[19] **A:** Yes, I believe that the trend towards  
[20] political correctness that we discussed earlier  
[21] has found an excess in the treatment of redskin  
[22] in this particular dictionary.  
[23] **MR. AARON:** Why don't we have this  
[24] packet of material marked as the next  
[25]

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**Butters**

- [1] exhibit in order, Butters 6.  
[2] (Butters Exhibit 6, Excerpt of 10th  
[3] Collegiate Merriam-Webster Dictionary,  
[4] marked for identification, as of this date.)  
[5] **Q:** The next packet of material that you  
[6] provided is clipped together, the cover of which  
[7] at the top says "Redskin Data Page 1". I have an  
[8] initial question about this document which is  
[9] similar to some other documents. I note for the  
[10] first several pages of this exhibit, there's a  
[11] printing on both sides. Could you explain what  
[12] the reverse side of these pages reflects?  
[13] **A:** The reverse side of these pages  
[14] reflects parsimony.  
[15] **Q:** Am I correct that you were - as  
[16] opposed to wasting paper, you were using the  
[17] backside of other paper?  
[18] **A:** My printer, when I printed this, was  
[19] loaded with recycled paper and so I printed on  
[20] this one side while the other side is totally  
[21] irrelevant to these proceedings and  
[22] meaningless -  
[23] **Q:** Okay.  
[24] **A:** - with respect to these proceedings.  
[25]

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[1] *Butters*

[2] Q: Okay.

[3] A: I think page – the back of the first

[4] page, for example, is a copy of a galley sheet

[5] from a page in American Speech that I published

[6] some time ago when I was editor. And that's –

[7] these are totally irrelevant.

[8] Q: I notice, coincidentally, on the

[9] backside of the first page of this document in a

[10] footnote, Mr. Nunberg's name is mentioned?

[11] A: Yes, and so is Mr. Cresswell's.

[12] Q: That's just an observation.

[13] Professor, could you identify what constitutes

[14] the first five pages of these materials?

[15] A: These – the first – I have to break

[16] it down into two parts.

[17] Q: Okay.

[18] A: The first four pages are notes that

[19] I've taken on a novel "Redskin" published in 1929

[20] written by Elizabeth Pickett Chevalier, Pickett

[21] with two Ts, Chevalier, C-H-E-V-A-L-I-E-R. And

[22] Paramount Picture, I know, is a silent film that

[23] was reintroduced to release at the same time as

[24] the novel. The first four pages are my notes on

[25] that.

Page 94

[1] *Butters*

[2] Page 5 is my note on E.R. Hagemann's

[3] edition of George Stanford's journal – of George

[4] Stanford's "Civil War Experiences".

[5] Q: And am I correct that following those

[6] pages of notes, you've included excerpts from

[7] those two books as part of this packet?

[8] A: Well, no. It looks as though – well,

[9] the sixth page is a very recent movie review of

[10] the Disney animated film "Pocahontas" in which

[11] the phrase redskin is used in a very neutral way.

[12] The page that follows that is from

[13] something I got on the Internet – no, the next

[14] page is a summary of a silent film called "The

[15] Death Mask" which was also known as "The Redskin

[16] Duel". This comes from an article written by

[17] someone – Karen C. Lund at the Library of

[18] Congress.

[19] Karen Lund apparently did an index –

[20] a catalog of all the silent films that are

[21] available at the Library of Congress, and there

[22] were two of them that had the term redskin in the

[23] title. One is "The Redskin Duel", also released

[24] as "The Death Mask". And then the much better

[25] known 1929 film "Redskin" which starred a fairly

Page 95

[1] *Butters*

[2] well-known – Gladys Belmont and Richard Dix. So

[3] this is a – this is a Library of Congress'

[4] summary of the plot of the movie of the silent

[5] film Redskin.

[6] That is followed by a newspaper story

[7] which I also got from the Internet which happens

[8] to mention that the film – I think it's sort of

[9] a travel piece by Chuck Barnes, and it happens to

[10] mention that the film "Redskin" was shot in 1929

[11] in Acama, New Mexico. That's toward the bottom

[12] of the page. There's a little arrow beside it.

[13] Then what follows is Xeroxes of pages

[14] from the novel Redskin which I read in its

[15] entirety. It's actually not such a bad novel.

[16] And I've highlighted all uses of the term redskin

[17] in that book. There was a title of a novel,

[18] there was the title of the film.

[19] The index page following, I included

[20] simply because it has the copyright date and the

[21] publisher.

[22] Following that was what I thought was

[23] a very interesting passage in which the word

[24] redskin appears four times. And the authors of

[25] this book were very proud of the fact that there

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[1] *Butters*

[2] was a song called "Redskin" which the very

[3] famous, apparently at that time, J.S. Zamecnik,

[4] Z-A-M-E-C-N-I-K, who had studied in Prague under

[5] Anton, Dvorak, D-V-O-R-A-K, had written. And the

[6] word redskin appears four times there.

[7] This is followed, then, by the score

[8] of a page of the song "Redskin" which I can't

[9] attempt to sing for you, but perhaps someone who

[10] is more knowledgeable in music can.

[11] And then it follows the refrain,

[12] "Redskin, Redskin, Boy of my dreams, Take me

[13] back to silver streams", et cetera. "Redskin,

[14] Redskin, Let us return where bright twilight

[15] welcome fires burn, I love you redskin, Love

[16] you".

[17] Q: And that's – this is included in the

[18] book "Redskin" –

[19] A: Yes.

[20] Q: – in the 1929 book?

[21] A: Yes. It was also the lyrics for the

[22] song that were published with a sheet music when

[23] the sheet music for "Redskin" was published. As

[24] I understand it - silent films were a little

[25] before my time, but, as I understand it, at least

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**Butters**

[1] in the late 20s, the best of the silent films  
[2] also had piano music that went with them and  
[3] someone sat in the pit and played the piano while  
[4] the movie was showing. That's about all I know  
[5] about that. But this was - and then the sheet  
[6] music would be sold along with it.  
[7] Now, I haven't highlighted on these  
[8] pages the places where redskin appears, but those  
[9] places are mentioned in my notes on pages 3 and 4  
[10] of this particular collection of materials that  
[11] you have just reproduced for your files. You'll  
[12] see, for instance, I - not only redman - not  
[13] only redskin, but also redman and other items  
[14] that I deemed relevant to the interpretation of  
[15] the usage of redskin in this particular book are  
[16] duplicated. There are about 20 instances of such  
[17] labeling.  
[18] Q: And at the tail end of this exhibit or  
[19] of this material appear to be some pages from the  
[20] book that you referred to earlier, edited with an  
[21] introduction by Mr. Hagemann?  
[22] A: Yes. It's Hagemann, H-A-G-E-M-A-N-N.  
[23] In 1969, this book was published at the  
[24] University of Oklahoma Press, certainly a  
[25]

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**Butters**

[1] respectable respect. What Mr. Hagemann did was  
[2] edit the journal that George B - the Colonel  
[3] George B. Sanford wrote about his civil war  
[4] experiences which actually was fairly early in  
[5] his career which Sanford had titled simply, I  
[6] think, "Experiences in Army Life". Yes, if you  
[7] look at the last page, the right-hand side of the  
[8] page, he entitled it simply "Experiences in Army  
[9] Life".  
[10] Hagemann wrote a long - over 100  
[11] pages of introduction to this book and re-titled  
[12] it "Fighting Rebels And Redskins" so that the  
[13] "Redskins" title in the scholarly book actually  
[14] comes in 1969. And it's Hagemann's word, not  
[15] Sanford's. And a large part of Hagemann's  
[16] introduction is a biography of Sanford from 1861  
[17] until his death early in the 20th century.  
[18] Q: The sixth page of this exhibit  
[19] contains, I guess, a reference to Pokahontas and  
[20] you had mentioned earlier that there was a  
[21] neutral reference to redskin -  
[22] A: Right.  
[23] Q: - in here? Are you referring to the  
[24] section where it talks about Governor Radcliff  
[25]

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**Butters**

[1] believing that all redskinned people are savages  
[2] who need to be exterminated?  
[3] A: Yes.  
[4] Q: You believe in this context  
[5] redskinned is being used in a neutral manner?  
[6] A: Yes, by the author of the review, yes.  
[7] MR. AARON: I'd like to have this  
[8] marked as the next exhibit in order which is  
[9] No. 7.  
[10] (Butters Exhibit 7, Document entitled,  
[11] "Redskin data- page 1", marked for  
[12] identification, as of this date.)  
[13] Q: With respect to Exhibit 7, Professor,  
[14] am I correct that that was prepared after your  
[15] report was submitted?  
[16] A: Yes.  
[17] Q: Okay. The next packet of materials  
[18] also was in a clip, the front page of which says  
[19] "On-line files, redskin(s)", page 1 and it goes  
[20] on to the top of page - exactly 52 pages?  
[21] A: It should be 53. I think you may  
[22] have - it's 53 pages. Are you missing -  
[23] Q: In your copy there's 53?  
[24] A: Yes. Are you missing the last page?  
[25]

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**Butters**

[1] Q: I am. Why don't I - maybe I could  
[2] see the last page and I'll have a copy of it made  
[3] during the break.  
[4] A: I notice that my pages were a bit  
[5] jumbled so perhaps yours is in there somewhere  
[6] and it's just -  
[7] Q: Okay. Let me take a look at that.  
[8] The same is true with respect to the backside  
[9] of - the reverse side of these pages, that they  
[10] have nothing to do with this matter?  
[11] A: Yes.  
[12] Q: Okay.  
[13] A: I would have Xed them out, but I just  
[14] didn't.  
[15] Q: Could you please describe what is  
[16] contained in these 53 pages of materials.  
[17] A: These are materials I downloaded from  
[18] the Internet as a result of a search for the term  
[19] redskin with - in which I - what I asked for  
[20] was citations that included redskin, but to  
[21] eliminate all references that had - I forgot  
[22] exactly what I asked for, but it was something  
[23] like football. "Fan", perhaps, because I kept  
[24] getting these web pages from redskin fans. And I  
[25]

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**Butters**

- [1] **Butters**
- [2] knew there was going to be a ton of material used
- [3] in that environment so I wanted to focus on other
- [4] kinds of environments.
- [5] **Q:** And why did you conduct this search?
- [6] **A:** I guess the simplest answer is I was
- [7] simply looking for additional evidence. And I
- [8] was particularly interested in contemporary
- [9] evidence since my looking at the earlier
- [10] documents convinced me that, up until the early
- [11] 1980s, redskin was a neutral term. And since the
- [12] dictionary labelings had begun to indicate
- [13] otherwise, I wanted to – I wanted to look more
- [14] closely at exactly the sorts of evidence that I
- [15] felt the dictionary makers should have been
- [16] looking at in order to – to add the labels that
- [17] they did.
- [18] **Q:** What effect, if any, did the search
- [19] that you did have upon the conclusions reached in
- [20] your report?
- [21] **A:** The material of these 53 pages really
- [22] confirms my earlier opinions.
- [23] **Q:** At page 41 of these materials, there
- [24] appears to be a copy of an E-mail message from a
- [25] Paul Woodford that purports to contain a list of

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**Butters**

- [1] **Butters**
- [2] slurs. Do you see that?
- [3] **A:** Yes.
- [4] **Q:** And included among the slurs is the
- [5] term redskin. My question is, on the – that's
- [6] on page 43. But on page 42, there appears to be
- [7] some handwriting. Could you read what that says?
- [8] **A:** It says, "Totally mixed list".
- [9] **Q:** And what did that refer to?
- [10] **A:** That's my comment. That's my
- [11] handwriting. And this is – it's a kind of
- [12] shorthand notation for what I believe is
- [13] Mr. Woodford's point in having written this memo
- [14] at all. I'm not sure exactly why this was on the
- [15] Internet, but he must have sent it to something,
- [16] "Subgenious Digest".
- [17] The substance of Mr. Woodford's
- [18] message is clearly that he feels that this list
- [19] is ludicrous and absurd and that the idea that
- [20] these are – that this list is a list of terms
- [21] that should be avoided is a kind of political
- [22] correctness gone mad.
- [23] **Q:** Do you see on page 44 there are two
- [24] references to yellow belly, the second of which
- [25] you highlighted?

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**Butters**

- [1] **Butters**
- [2] **A:** Yes.
- [3] **Q:** Does that refresh your recollection as
- [4] to that term?
- [5] **A:** Yes, it does now. He says that it's
- [6] been left out of this list, although it was in a
- [7] list that went around last year. What we find
- [8] here is someone protesting the protestations
- [9] about language and saying, essentially, that he
- [10] feels political correctness has gone too far.
- [11] **Q:** On the first two pages of this
- [12] document, there's handwriting that appears with
- [13] respect to an entry entitled "Twisted Footnote to
- [14] Wounded Knee". Can you read the handwriting at
- [15] the bottom of page 1 there?
- [16] **A:** This is my handwriting. It says,
- [17] "But this is bitter" – bitter is doubled
- [18] underscored – "irony".
- [19] **Q:** And what does that relate to?
- [20] **A:** What we're looking at here is –
- [21] "Twisted Footnote to Wounded Knee" is an article
- [22] written by Professor Robert Venables of Cornell
- [23] University and published in 1990. It's an
- [24] article which discusses two editorials in the
- [25] "Aberdeen Saturday Pioneer" which were written

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**Butters**

- [1] **Butters**
- [2] by – in 1890 by L. Frank Baum, B-A-U-M, who was
- [3] also the author of the Wizard of Oz books. These
- [4] are editorials which Professor Venables
- [5] interprets as calling for the extermination of
- [6] American Indians.
- [7] With respect to these proceedings, my
- [8] comments here are not particularly relevant since
- [9] I'm really discussing here whether Baum was being
- [10] ironic or not. What's relevant is the use of the
- [11] term Redskin here with a capital R in the third
- [12] paragraph of the editorial quoted on page 1 in
- [13] which Baum says, "With his fall, the nobility of
- [14] the redskin is extinguished."
- [15] It seems to me this was – in Baum's
- [16] use of the term, the term redskin, he could just
- [17] as easily have substituted Indian here. So this
- [18] is an example of a neutral late 19th century use
- [19] of the term.
- [20] **MR. AARON:** Why don't we have this
- [21] packet of materials marked as the next
- [22] exhibit in order, Exhibit 8, please.
- [23] (Butters Exhibit 8, Document entitled,
- [24] "Online files – Redskin(s), page 1",
- [25] marked for identification, as of this date.)

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**Butters**

- [1] **Butters**  
[2] **A:** Perhaps I should clarify. To the best  
[3] of my recollection, what I did here was  
[4] downloaded everything that I found. That's not  
[5] any principal selectivity other than the ones  
[6] that I enunciated originally. I really was  
[7] trying to find every instance of redskin that I  
[8] could find.  
[9] You'll notice on page 7, for example,  
[10] even though I tried to avoid references to the  
[11] football team, it came up, nonetheless, on page 7  
[12] in the middle of the page.  
[13] **Q:** Okay.  
[14] **A:** Are we done with these 53 pages?  
[15] **Q:** Yes.  
[16] **MR. AARON:** Why don't we take a short  
[17] break.  
[18] (Recess taken.)  
[19] **Q:** The next packet of materials consists  
[20] of what appears to be a series of copies of  
[21] excerpts from a series of articles.  
[22] **A:** Right.  
[23] **Q:** Could you please identify what's  
[24] included here?  
[25] **A:** Phil Rahv as literary critic - I

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**Butters**

- [1] **Butters**  
[2] think we discussed this earlier - writing in the  
[3] mid-20th century. I think he died in 1974 and I  
[4] think he was the one responsible for the famous  
[5] article which is reproduced a couple of times in  
[6] these materials called "Paleface And Redskin" in  
[7] which he divided up the American tradition in  
[8] literature as the sort of native - it's  
[9] traditional of Mark Twain and Walt Whitman and  
[10] the more Anglophiled tradition of, say, Henry  
[11] James. These are simply copies of that article.  
[12] And a later article about that article  
[13] written by Sanford Pinsker, that's the fourth  
[14] item in this packet, with which he says,  
[15] "Theoretical Paleface is Neorealistic  
[16] Redskins". That's part of the title of the  
[17] article. I looked at this book by Joan Beam  
[18] and - I'm sorry. Was there something else you  
[19] wanted to ask me about Rahv?  
[20] **Q:** Am I correct the first four articles  
[21] concern Mr. Rahv?  
[22] **A:** Right. Mr. Rahv and sort of the  
[23] continuing tradition of Rahv in this 1992 article  
[24] which also uses the term redskins in its title.  
[25] **Q:** Yes. And we're up to the first

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**Butters**

- [1] **Butters**  
[2] article?  
[3] **A:** This is just a few pages from an  
[4] annotated bibliography called, "The Native  
[5] American in Long Fiction", by Joan Beam, B-E-A-M,  
[6] and Barbara Branstad, B-R-A-N-S-T-A-D, published  
[7] by the Scarecrow Press in 1996. To be honest  
[8] with you, I don't have any other comment on  
[9] these.  
[10] **Q:** Okay.  
[11] **A:** The book "Little Big Man" is a novel  
[12] by Thomas Berger.  
[13] **Q:** Which is referenced in the next page?  
[14] **A:** Yes, page 20. I think I thought at  
[15] one time about looking at that if I had time just  
[16] to see if the term redskin was used in that 1979  
[17] novel and, if so, how. But I didn't do anything  
[18] with it.  
[19] **Q:** And the last couple of pages, three  
[20] pages, what are those?  
[21] **A:** You know, I'm not sure. This is -  
[22] I'm not sure what book this is from or why. I  
[23] think this is a 1981 book. And I was interested  
[24] in it because it seemed to be one of the first  
[25] instances in which a scholar actually said in

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**Butters**

- [1] **Butters**  
[2] print that he found the term redskin offensive or  
[3] objectionable. If you look at the language page  
[4] where it says note on terminology - do you see  
[5] what I'm referring to?  
[6] **Q:** Yes.  
[7] **MR. AARON:** Let's have this collection  
[8] marked, please, as Butters Exhibit 9.  
[9] (Butters Exhibit 9, Series of copies  
[10] of excerpts from a series of articles,  
[11] marked for identification, as of this date.)  
[12] **Q:** Professor Butters, I'd now like to  
[13] turn to the two folders of materials which I  
[14] understand are materials that were used or relate  
[15] to the actual preparation of your report.  
[16] **A:** Right.  
[17] **Q:** Am I right about that?  
[18] **A:** Right. There also are - there is  
[19] also correspondence in here.  
[20] **Q:** But that relates to your retention in  
[21] connection with preparing the report, correct?  
[22] **A:** Yes.  
[23] **Q:** The folder itself is entitled,  
[24] "Deposition Discovered Materials"?  
[25] **A:** Um-hum.

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**Butters**

- [1]  
[2] **Q:** These are just materials that you were  
[3] providing to produce to the deposition?  
[4] **A:** Right.  
[5] **Q:** On the inside cover there was some  
[6] handwriting. Does that have any significance in  
[7] connection with this case?  
[8] **A:** I'm not sure. I think these are call  
[9] numbers. The Duke library still uses the Dewey  
[10] Decimal System. I think these are call letters  
[11] for books that I either checked out or thought  
[12] about checking out.  
[13] **Q:** Okay. The following appears to be a  
[14] series of articles, the first of which is  
[15] "Xenophobic Ethnica" by John Algeo, A-L-G-E-O.  
[16] Could you describe what these articles represent?  
[17] **A:** These are all articles which, in one  
[18] way or another, I cited - well, I either cited  
[19] in my report or they are things I looked at in  
[20] preparation of my report. The section from the  
[21] 1952 Boy Scout Handbook, there are four pages -  
[22] I think it's a 1952 Boy Scout Handbook - 1953 it  
[23] says at the top of the second page. These were  
[24] references to Indians.  
[25] I didn't actually include this stuff

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**Butters**

- [1] in my report, but I was trying to get a feeling  
[2] for the temper of the times, what sorts of things  
[3] did people teach their children about Indians.  
[4] And I was, obviously, looking to see if the term  
[5] redskin did appear in the handbook. It didn't  
[6] happen to appear.  
[7] **Q:** Am I correct that, in connection with  
[8] these articles, you had made two-sided copies  
[9] such that, with respect to these pages, the  
[10] reverse sides of the pages do, in fact, have  
[11] relevance to these proceedings?  
[12] **A:** Yes, right. I'm sorry for the  
[13] confusion. The material I printed on my computer  
[14] has irrelevant back sides. It's the things that  
[15] I Xeroxed to bring with me I did front and back  
[16] so it would be easier. I guess parsimony again.  
[17] I want to be ecologically pure.  
[18] So the next one is an article by  
[19] Merritt Clifton which I believe I cite in my  
[20] report called "How To Hate Thy Neighbor". I did  
[21] look at H.L. Mencken's opprobrious list of  
[22] nicknames which is a - from an early American  
[23] Speech. I don't think I actually quote that in  
[24] my report, but Mencken was one of the - he was a

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**Butters**

- [1]  
[2] sort of predecessor to William Safire in a lot of  
[3] ways. A man who was not trained as a linguist  
[4] but became a journalist very interested in  
[5] language. He actually helped to found the  
[6] "Journal of American Speech" which I edited  
[7] along with a marvelous woman who was named Louise  
[8] Pound, P-O-U-N-D, one of the great Corn Huskers  
[9] fans.  
[10] The next article is John Lipski's  
[11] "Prejudice and Pronunciation", which also  
[12] appeared in the 1970s in American Speech. I  
[13] don't think that had anything of relevance either  
[14] to my report, but I did consult it.  
[15] Then comes Robert Burchfield's  
[16] "Dictionaries and Ethnic Sensibilities" which  
[17] we've discussed before.  
[18] Then comes Sterling Eisiminger's very  
[19] interesting article from "Maledicta". Sterling  
[20] Eisiminger, "A Glossary Of Ethnic Slurs in  
[21] American English" which I do refer to in my  
[22] article - my report.  
[23] Sidney Landau's article, "The  
[24] Egalitarian Spirit" which I believe I referred to  
[25] in my report.

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**Butters**

- [1] Wilmoth A. Carter's article "Nicknames  
[2] and Minority Groups" which appeared in 1944 in  
[3] "Phylon", P-H-Y-L-O-N.  
[4] Article by Dunlap and Weslager,  
[5] W-E-S-L-A-G-E-R, which was published in 1947 in  
[6] American Speech which I don't - I'm not sure  
[7] whether I refer to that in my report or not.  
[8] Very brief article by Fred Cassidy,  
[9] C-A-S-S-I-D-Y, called "Another Look at Buckaroo"  
[10] which I consulted in preparation of - for my  
[11] report.  
[12] The next page has some things in my  
[13] own handwriting and also some things that were  
[14] printed out for my computer. This is a list of  
[15] articles, most of which, I think, I've just given  
[16] you which I did look at in preparation - most of  
[17] which I did look at in preparation for - of my  
[18] report. These are at least things I considered  
[19] looking at.  
[20] This is kind of a working sheet.  
[21] There's one item on the backside which also is  
[22] relevant. And then, I'm sorry to say, there's  
[23] some irrelevant material because this was printed  
[24] on my computer using scrap paper.  
[25]



Page 113

**Butters**

- [1]
- [2] **Q:** That's the page which at the upper
- [3] left in typewritten says "situation"?
- [4] **A:** Yes. The material beginning with
- [5] "situation" and ending with "the order in which"
- [6] is totally irrelevant to these proceedings.
- [7] The next sheet is actually four pages
- [8] from Irving Lewis Allen's scholarly book 1983,
- [9] "The Language of Ethnic Conflict" which I do
- [10] refer to in my report.
- [11] Terms for American Indians, a
- [12] discussion of the term Canuck, C-A-N-U-C-K, a
- [13] term used for French Canadians.
- [14] The next two pages - there's a page
- [15] that begins page at 260. I think I reproduced
- [16] that one twice on one side. On one of them, I've
- [17] written "Listening to America, Stuart Berg
- [18] Flexner" in my own handwriting. This is material
- [19] which I do refer to in my report and it has to do
- [20] with the names of professional athletic teams.
- [21] On the back side of that - on the
- [22] back side of one of them is a letter to me dated
- [23] July 29, 1996 from Nadine P. Flynn, and the other
- [24] side is a memo to my assistant in my office at
- [25] Duke who did some - who actually went to the

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**Butters**

- [1] library and checked out a few books and did some
- [2] Xeroxing for me.
- [3] And this is a memo, I believe, that I
- [4] sent to him by E-mail and literally printed and
- [5] wrote a few additions to it in my own
- [6] handwriting. The call numbers are in Charles's
- [7] handwriting so he must have printed it out and
- [8] then returned it to me.
- [9] **Q:** In connection with the preparation of
- [10] your report, aside from taking books out and
- [11] photocopying, which is what your assistant did,
- [12] was there anyone else who assisted in any way in
- [13] connection with the preparation of the report?
- [14] **A:** My friend Stuart Aycock did go to
- [15] Kinko's and Xeroxed the pages from the "Ohitika
- [16] Woman" for me the other day. And I think that's
- [17] about it.
- [18] **Q:** You typed the report yourself on your
- [19] computer?
- [20] **A:** Oh, yeah.
- [21] The next two pages - there's one with
- [22] a stick-on note that says, "I did not find
- [23] redskin in Webster's New World Dictionary of the
- [24] American Language", signed C. That's Charles
- [25]

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**Butters**

- [1]
- [2] Carson also. And he Xeroxed this page from the
- [3] Random House Dictionary of the English Language.
- [4] It's a page with an entry for redskin. That's a
- [5] 1987 unabridged.
- [6] On the backside is redskin from the
- [7] Second Edition of the Oxford English Dictionary
- [8] which Charles Carson also Xeroxed.
- [9] I don't know what this next page has
- [10] to do with anything. It may have been -
- [11] **Q:** Are you talking about the page with
- [12] handwriting at the bottom, OEC 2, 1981?
- [13] **A:** Yes. It looks as though the wrong
- [14] page has been Xeroxed here and it's not - oh,
- [15] I'm sorry. If you look at the one legible column
- [16] near the bottom, it says, "Of certain peoples,
- [17] especially the North American Indians: Having
- [18] (or regarded as having) a reddish skin. Red
- [19] Indian: See Indian, see also redman, red skin".
- [20] What follows here in my copy are one,
- [21] two, three, four, five, six pages from, it looks
- [22] like, Sidney Landau's book, "Dictionaries: The
- [23] Art and Craft of Lexicography". And I believe
- [24] these are materials I referred to in my report.
- [25] Shall I go on?

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**Butters**

- [1]
- [2] **Q:** Please.
- [3] **A:** Five handwritten pages from - in my
- [4] own handwriting which are very sketchy notes that
- [5] I had made at the time I was looking at some of
- [6] the original two boxes of materials that
- [7] Dr. Flynn - that Nadine Flynn, Juris
- [8] Doctor Flynn, sent me last spring.
- [9] **Q:** And those copies of which are the two
- [10] stacks on the table that we referred to earlier?
- [11] **A:** Yes.
- [12] **Q:** Okay.
- [13] **A:** Then follow three pages of
- [14] bibliographical references. These are materials
- [15] that I got from the Internet. Perkins is the
- [16] name of the library at Duke University where most
- [17] of these are located. You'll see one, record
- [18] number nine at the top of the second column on
- [19] page 1 is located in the law library. Mary
- [20] Elizabeth Young's 1961 book "Redskins,
- [21] Ruffleshirts and Redneck; Indian Allotments in
- [22] Alabama and Mississippi, 1830 through 1860", this
- [23] was in the law library. Those are bibliography
- [24] publications.
- [25] Then come pages from H.L. Mencken's

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**Butters**

[1]  
[2] article, "Designations For Colored Folk"  
[3] published in October 1944 in American Speech  
[4] which I consulted in the process of preparing my  
[5] report.

[6] The next three pages are materials  
[7] which - I'm sorry. The next two pages are  
[8] printouts of E-mails that I sent to Randy Roberts  
[9] and received back from him.

[10] Then there's a page that -

[11] **Q:** And that concerns the Tamony  
[12] collection which you testified about earlier?

[13] **A:** Right. And then there are - there's  
[14] a page that says in the middle of it, "Notice:  
[15] Warning Concerning Copyright Restrictions". That  
[16] came back from Mr. Tamony along with the page  
[17] that - I don't know how to describe it, but on  
[18] one side there is what looks like a Xerox of a  
[19] card that says "Manchester Guardian Weekly",  
[20] question mark. Those - the three citations on  
[21] that side of the page and the two citations on  
[22] the other side of the page, those five citations  
[23] actually came from Mr. Roberts at the University  
[24] of Missouri. One of them has to do with Philip  
[25] Rahv, I believe, and others have to do with other

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**Butters**

[1] citations in which redskin actually occurred.  
[2] Okay?

[3] **Q:** Yes.

[4] **A:** There's a sheet which is a transcript  
[5] of E-mail message I sent to Charles Carson on  
[6] 13 May asking him to check out three books for me  
[7] while I was in Italy.

[8] And then the last two pages are  
[9] printouts of E-mail messages between me and Larry  
[10] Davis and between me and Robert Wachal which I  
[11] testified about earlier.

[12] **THE WITNESS:** That's Wachal, you've  
[13] got that? I believe that's it.

[14] **Q:** Well, that's it of that first stack?

[15] **A:** Right. I was too optimistic.

[16] **Q:** Right. What I propose to do, and  
[17] maybe I can lead you through the next two  
[18] articles or three - I guess it's only two -  
[19] there's an article that appears to be entitled,  
[20] "What are we going to do about it now that we're  
[21] number one", by James Sledd -

[22] **A:** Right.

[23] **Q:** - and then what appears to be  
[24] "Ohitika Woman" excerpts from that. Am I  
[25]

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**Butters**

[1]  
[2] correct?

[3] **A:** Yes. This is the same materials that  
[4] I testified about earlier.

[5] **Q:** And, in fact, it has the same Post It  
[6] fax note -

[7] **A:** Right.

[8] **Q:** - on it?

[9] **MR. AARON:** So what I'm going to do  
[10] from an exhibit perspective is, I'm not  
[11] going to include it in mine. If that's  
[12] acceptable to counsel.

[13] **MS. FLYNN:** That's fine.

[14] **MR. AARON:** So what I propose to do is  
[15] mark as much of the folder as we've gone  
[16] through as you've just identified as the  
[17] next exhibit in order, Exhibit 10.

[18] (Butters Exhibit 10, Compilation of  
[19] documents, marked for identification, as of  
[20] this date.)

[21] **MR. AARON:** I'd like to have marked as  
[22] the next exhibit a series of documents which  
[23] appear to be correspondence between  
[24] Mr. Butters and White & Case. There are  
[25] letters from Mr. Butters to Nadine Flynn at

Page 120

**Butters**

[1] White & Case dated May 6, '96; July 23, '96;  
[2] June 10, '96; September 11, '96; and April  
[3] 22, '96; followed by letters from Ms. Flynn  
[4] to Mr. Butters dated June 24, '96; September  
[5] 4, '96; May 2, '96; July 9, '96; and a memo  
[6] from Mr. Butters to Nadine Flynn of April  
[7] 22, '96 with some handwriting on the reverse  
[8] side.

[9] **THE WITNESS:** Right.

[10] **MS. FLYNN:** The only thing I'd like to  
[11] state is there are two letters dated -  
[12] there's a letter with enclosure. The July  
[13] 23 letter is a letter with enclosure, as  
[14] well the June 10th is a letter of enclosure.

[15] **MR. AARON:** Yes.

[16] **MS. FLYNN:** And September 11th also  
[17] has an enclosure that's dated September 11  
[18] as well.

[19] **MR. AARON:** I'd like to have those  
[20] documents marked collectively as Plaintiff's  
[21] Exhibit 11, please.

[22] (Butters Exhibit 11, Correspondence  
[23] between Butters and Flynn, marked for  
[24] identification, as of this date.)  
[25]

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**Butters**

- [1]  
[2] **Q:** Professor Butters, I'd like to refer  
[3] you to what's been marked as Plaintiff's Exhibit  
[4] 11. Am I correct that these documents constitute  
[5] correspondence between you and Nadine Flynn at  
[6] White & Case and in some cases with enclosures  
[7] attached thereto?  
[8] **A:** Correct.  
[9] **Q:** What is your compensation arrangement  
[10] in connection with providing expert testimony in  
[11] this matter?  
[12] **A:** It's exactly as stated in the letter  
[13] of 22 April 1996. My basic fee is \$150 per hour  
[14] for depositions, and courtroom testimony I charge  
[15] 1,200 per day for each day or partial day at your  
[16] service, travel time excluded, plus reimbursement  
[17] for normal travel expenses.  
[18] **Q:** Are the amounts that have been  
[19] received by you to date reflected in this  
[20] exhibit?  
[21] **A:** Yes.  
[22] **Q:** Are there any other documents that  
[23] reflect the agreement with respect to your  
[24] compensation -  
[25] **A:** No.

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**Butters**

- [1]  
[2] **Q:** - aside from Exhibit 11?  
[3] **A:** Not to my knowledge.  
[4] **Q:** Do you keep time sheets?  
[5] **A:** Yes. I keep a - generally keep  
[6] entries in my calendar -  
[7] **Q:** Of the -  
[8] **A:** - each day.  
[9] **Q:** Of the number of hours spent on each  
[10] project?  
[11] **A:** Right.  
[12] **Q:** Does your calendar reflect anything  
[13] other than the numbers of hours such as what you  
[14] did, who you spoke with?  
[15] **A:** No. Sometimes it reflects telephone  
[16] conversations because I'll write the phone number  
[17] down if I'm to call them back. But I don't keep  
[18] in my calendar substantive notes on telephone  
[19] conversations.  
[20] **Q:** And, I take it, there's no contingency  
[21] fee-type arrangement here -  
[22] **A:** No.  
[23] **Q:** - based upon the outcome of the case?  
[24] **A:** I see. No, no, certainly not.  
[25] **Q:** I'll refer you to the third to last

Page 123

**Butters**

- [1]  
[2] page of this exhibit which is a letter dated June  
[3] 24, 1996 from Nadine Flynn to you. Did you, in  
[4] fact, receive copies of the various reports that  
[5] are listed in this letter?  
[6] **A:** Yes, I did.  
[7] **Q:** On the very back of this exhibit,  
[8] which is the backside of the April 22, 1996  
[9] letter or memo that you sent to Nadine Flynn,  
[10] there's handwriting.  
[11] **A:** Yes.  
[12] **Q:** What does that handwriting reflect?  
[13] **A:** I believe these are notes I made,  
[14] perhaps, although I'm not sure, during my first  
[15] telephone conversation with Nadine Flynn. It  
[16] certainly was prior to my report, late enough to  
[17] know that June 7th was the deadline for a report  
[18] and that, I guess, June 10th for disclosure of  
[19] witnesses.  
[20] **Q:** The bottom right appears Washington  
[21] Redskins, skins and some other word. Right below  
[22] that, that's circled, what does that say?  
[23] **A:** It says semeotics, S-E-M-E-O-T-I-C-S,  
[24] in my handwriting.  
[25] **Q:** And what does that mean?

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**Butters**

- [1]  
[2] **A:** Semeotics is the study of the meaning  
[3] of signs that - signs could be anything from a  
[4] word to an icon such as a pair of pants on the  
[5] one door and a drawing of a skirt on another door  
[6] indicates rest rooms for men and women. That  
[7] would be the semeotics and the interpretation of  
[8] such signs, semeotics.  
[9] **MR. AARON:** I'd like to have marked as  
[10] the next exhibit Butters Exhibit 12 which is  
[11] a document, two-sided document that appears  
[12] to be in the handwriting of  
[13] Professor Butters.  
[14] (Butters Exhibit 12, Handwritten  
[15] document, marked for identification, as of  
[16] this date.)  
[17] **Q:** Professor, Butters, can you identify  
[18] this document?  
[19] **A:** This two-sided document is my  
[20] handwriting and these are notes that I made in an  
[21] early discussion of the case with Nadine Flynn.  
[22] I believe these are notes that I made in response  
[23] to her general outlining of the case and how it  
[24] was proceeding prior to contact with me.  
[25] **Q:** At the side of the page at the top

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**Butters**

- [1]  
[2] there appears to say five cents, circled?  
[3] **A:** Yes.  
[4] **Q:** At about three-quarters of the way  
[5] down on the right appears the name of the three,  
[6] and it's listed private schools, Stanford,  
[7] St. John's and Dartmouth. Do you know what that  
[8] signifies?  
[9] **A:** I believe these are schools which have  
[10] changed the names of their sports teams - the  
[11] names of the sports team, designator names. I  
[12] believe that's correct.  
[13] **Q:** And do you know why those names were  
[14] changed?  
[15] **A:** I believe they were changed in  
[16] response to political - sociopolitical pressure.  
[17] **Q:** I take it, these schools had athletic  
[18] team names that related to words for Native  
[19] Americans?  
[20] **A:** I'm certain that this was the case  
[21] with Stanford. I'm slightly less certain with  
[22] Dartmouth, but it's probably correct. And  
[23] St. John's, I simply don't remember.  
[24] **Q:** Mr. Axell, who was is Mr. Axell?  
[25] **A:** I don't know.

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**Butters**

- [1]  
[2] **Q:** Near the top of the page, again, on  
[3] the right states, "Significant number of American  
[4] Indians". Do you know what that refers to?  
[5] **A:** No. At this time, I don't.  
[6] **MR. AARON:** I'd like to have marked as  
[7] Butters Exhibit 13 a document which at the  
[8] top right states draft handwritten number  
[9] one, June 3, 1996 and consisting of 12  
[10] pages.  
[11] (Butters Exhibit 13, Draft number one,  
[12] marked for identification, as of this date.)  
[13] **Q:** Can you please identify Plaintiff's  
[14] Exhibit 13?  
[15] **A:** This is - that's what I'm looking at  
[16] now?  
[17] **Q:** Yes.  
[18] **A:** This is one of the earlier drafts of  
[19] my report.  
[20] **Q:** And was it prepared, to the best of  
[21] your recollection or to the best of your  
[22] knowledge, on or about June 3, 1996?  
[23] **A:** Usually, my practice is to put that  
[24] date in at the beginning of the preparation. So  
[25] I don't know whether that's when I started doing

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**Butters**

- [1]  
[2] this or when I finished doing it. I may have  
[3] gone back and changed it when I finished doing  
[4] this particular draft. I'm not sure. On or  
[5] about June 3 this draft was completed.  
[6] **Q:** And because this was printed out on  
[7] your computer, the material on the reverse side  
[8] of these pages is irrelevant to these  
[9] proceedings?  
[10] **A:** That's right. I've tried to X those  
[11] out when I brought them over.  
[12] **MR. AARON:** I'd like to have marked as  
[13] Butters Exhibit 14 a document in the upper  
[14] right which has draft and then handwritten  
[15] number 2, 3 June 1996.  
[16] (Butters Exhibit 14, Draft number two,  
[17] marked for identification, as of this date.)  
[18] **Q:** Can you identify Butters Exhibit 14,  
[19] please?  
[20] **A:** This is a later stage of a drafting of  
[21] my report.  
[22] **Q:** And I may have asked this question  
[23] earlier, I apologize. Did you provide any drafts  
[24] to the White & Case lawyers prior to the final  
[25] one?

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**Butters**

- [1]  
[2] **A:** No, I did not.  
[3] **Q:** You did discuss it, the report, with  
[4] them during its preparation, correct?  
[5] **A:** Yes.  
[6] **MR. AARON:** I'd like to have marked as  
[7] Butters Exhibit 15 a document, the cover of  
[8] which is handwritten. It says "Notes" and  
[9] then there's a "Report", the word report  
[10] underlined, and it consists of 12 pages.  
[11] (Butters Exhibit 15, Document  
[12] consisting of 12 pages, marked for  
[13] identification, as of this date.)  
[14] **Q:** Professor Butters, you have before you  
[15] what's been marked as Plaintiff's Exhibit 15.  
[16] Can you identify that, please?  
[17] **A:** These are the - like the first stage  
[18] of notes that I made in preparing the report.  
[19] It's a real brainstorming kind of thing. It's  
[20] intermixed with commentary on some of the  
[21] readings that I did. It's just what it says  
[22] on - at the top, notes. It's sort of the - the  
[23] last stage of the first stuff that I put in my  
[24] computer.  
[25] **Q:** I'd like to refer you to page 3 of

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**Butters**

[1] this document entry at the bottom. There's a  
[2] reference to Irving Louis Allen's books, "Unkind  
[3] Words, Ethnic Labeling From Redskin to Wasp". Do  
[4] you see that?  
[5] **A:** Yes.  
[6] **Q:** And you have some notes about that  
[7] book that appear on the bottom of that page and  
[8] the top of the next page. And under page P1 on  
[9] page 4 of this document, there's a reference to  
[10] redskin as an ethnic slur. Am I correct about  
[11] that?  
[12] **A:** On page 1.  
[13] **Q:** It's next to the entry P1.  
[14] **A:** Yes. P stands for page.  
[15] **Q:** Is there any reference in the final  
[16] version of your report to this book by Mr. Allen?  
[17] **A:** No. This book was, essentially, a  
[18] popularization. I refer to - only in my report  
[19] to his more scholarly book which I think is the  
[20] 1983 book rather than the 1990 one.  
[21] The - even so, the passage just above  
[22] the one that you quoted, I think, might be worthy  
[23] of note where he says, Slurs also vary greatly in  
[24] pejoration, P-E-J-O-R-A-T-I-O-N, ranging from the  
[25]

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**Butters**

[1] malicious and vicious to the puerile,  
[2] P-U-E-R-I-L-E, and jocular. The meaning of words  
[3] is not inherent in the words themselves, but in  
[4] what the words mean to the speaker and hearer.  
[5] And then Allen goes on to say, Ethnic  
[6] slur is an ethnic epithet which is, quote,  
[7] offensive in some degree to some people and this  
[8] depends on the speaker, the hearer and the  
[9] relationship and the social context in which the  
[10] words are used.  
[11] **Q:** There's question in your mind, is  
[12] there, Professor, that Mr. Allen believes that  
[13] redskin is an ethnic slur or a slur name?  
[14] **A:** I believe that he believes that it's  
[15] an ethnic slur within the framework of the  
[16] definition which I just read which suggests that  
[17] virtually anything could be an ethnic slur. And  
[18] indeed - even within this particular book, he  
[19] mentions that Scotsmen is sometimes an ethnic  
[20] slur. So within that context, yes. But I  
[21] wouldn't want you to think about ethnic slur.  
[22] Allen is equating the term redskin with a term  
[23] such as kike or nigger.  
[24] **Q:** But -  
[25]

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**Butters**

[1] **A:** Again, he's recognizing that the  
[2] framework of ethnic terminology is spread out  
[3] over a continuum of which redskin is far from a  
[4] serious one.  
[5] **Q:** Your words, not his?  
[6] **A:** He doesn't say that explicitly here.  
[7] In my report, I discuss what he says about - or  
[8] what he doesn't say about redskin in his earlier  
[9] book where he does not treat it as a - as an  
[10] ethnic slur of any particular moment.  
[11] **Q:** Allen certainly views the word redskin  
[12] as pejorative, does he not?  
[13] **A:** In some degree, to some people,  
[14] depending on the speaker, the hearer and their  
[15] relationship and the social context in which the  
[16] word is used.  
[17] **Q:** In your professional opinion, if  
[18] someone were to use the word disparaging to  
[19] describe a word in and of itself without  
[20] reference to the intention of the speaker, would  
[21] that be an improper use of the word disparaging?  
[22] **MS. FLYNN:** Could I hear that read  
[23] back?  
[24] **MR. AARON:** Please.  
[25]

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**Butters**

[1] (Record read.)  
[2] **A:** Yes, it would be an improper use of  
[3] the word disparaging in the sense as defined in  
[4] American dictionaries and in the prefatory  
[5] material to American dictionaries. That's not  
[6] the way dictionary makers use the term  
[7] disparaging.  
[8] **Q:** Do you have a professional opinion as  
[9] to how the word disparaging is used in section 2A  
[10] of the Lanham which is a colloquial term in the  
[11] trademark law?  
[12] **A:** The -  
[13] **MS. FLYNN:** To the extent you're  
[14] asking him to interpret law, I have an  
[15] objection to that question. But whatever  
[16] your understanding is.  
[17] **A:** As I understand it, in - I mean,  
[18] there are certain words that do have specialized  
[19] legal meanings. So far as I know, disparaging  
[20] has no legal meaning apart from the normal  
[21] meaning that one finds within - within American  
[22] dictionaries.  
[23] Now, also, it's my understanding that  
[24] sometimes statutes will define words within the  
[25]

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**Butters**

[1]  
[2] framework of the particular act. So far as I  
[3] know, the Lanham does not define disparaging in  
[4] any further way. If it does, I would be, of  
[5] course, interested to see that and – but no one  
[6] has ever pointed out to me any further usage.  
[7] It's also my understanding that –  
[8] those two caveats aside – that the way that  
[9] language is used within statutes is of the  
[10] ordinary meaning of the term as – of which a  
[11] good bench mark is the consensus of dictionary  
[12] makers. So my assumption – my inference, then,  
[13] is disparaging within the framework of the Lanham  
[14] is used as I've defined it.

[15] **Q:** But that would mean that there would  
[16] never be a disparaging mark in and of itself  
[17] because there is no speaker whose intents you can  
[18] study; isn't that right?

[19] **A:** Your inference is faulty, I believe,  
[20] with all due respect. That is, there are some  
[21] words which, by consensus, are so inflammatory  
[22] that within almost any context in which they are  
[23] used those words will be considered  
[24] objectionable. And anyone who is in touch at all  
[25] with the mainstream of the culture would find it

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**Butters**

[1]  
[2] almost impossible, except under certain highly  
[3] unusual circumstances, to use such words in  
[4] anything other than a disparaging way.

[5] Therefore, a word such as nigger, I  
[6] believe, or words such as kike, I believe, would  
[7] be intrinsically disparaging from the point of  
[8] view of a dictionary maker. And anyone in touch  
[9] with the culture will not name a dahlia nigger  
[10] culture – nigger dahlia. Anyone in touch with  
[11] the culture will not name a peach nigger peach.  
[12] Anyone in touch with culture would no longer call  
[13] Brazil nuts nigger toes as they were called  
[14] earlier in this century because that term has,  
[15] today, such a highly – highly charged and  
[16] disparaging meaning.

[17] On the other hand, someone can today  
[18] invent a new dahlia and call it a redskin dahlia  
[19] and not fear that anyone will be offended by  
[20] this. People will build new subdivisions in  
[21] which they place street names called Redskin Lane  
[22] and not fear that anyone is going to be offended  
[23] by this.

[24] **Q:** Is there a continuum, in your  
[25] professional opinion?

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**Butters**

[1]  
[2] **A:** Yes, there is a continuum.

[3] **Q:** There is a continuum. And you think  
[4] nigger is definitely inherently disparaging; is  
[5] that fair?

[6] **A:** No word – no word, of course, is  
[7] inherently disparaging. In the 19th century, the  
[8] term nigger was much more acceptable to most  
[9] people.

[10] **Q:** Prima facie disparaging?

[11] **A:** That's a legal term, I guess, that  
[12] you'll have to define for me.

[13] **Q:** Not one you're familiar with?

[14] **A:** You'll have to define it for me.

[15] **Q:** It's not one you're familiar with?

[16] **A:** I prefer you to define it for me,  
[17] since it comes out of your bailiwick, before I  
[18] answer the question.

[19] **Q:** Okay. Let me rephrase the question.  
[20] So you think nigger is on the end of  
[21] the continuum such that you're comfortable in  
[22] saying that, in your professional opinion, it  
[23] would be – if someone used that word in a  
[24] trademark, that that would be a disparaging mark,  
[25] correct?

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**Butters**

[1]  
[2] **A:** Nigger has become virtually a taboo  
[3] word in American culture.

[4] **Q:** Okay. What about the word fag or  
[5] faggot as applied to a gay male, relating to a  
[6] gay male, would that be a mark that's disparaging  
[7] if that word were used in it? Fag jeans? I  
[8] don't know.

[9] **A:** I'm, frankly, less quick to say – to  
[10] say that. That is, I don't think that word is as  
[11] far on – far off the spectrum as nigger or  
[12] kike. I do believe that faggot is usually  
[13] uttered, when uttered by Americans, in a  
[14] disparaging manner. That is, that the intent of  
[15] speakers when they use faggot is usually  
[16] disparaging.

[17] And I think a strong case could be  
[18] made for saying, yes, there's no Faggot Street in  
[19] New York City, there's no – there are not faggot  
[20] jeans. Nobody would think of doing that, for a  
[21] very good reason. And, that is, that they would  
[22] know that this word is too highly charged in the  
[23] minds of Americans.

[24] **Q:** If there were a word such as nigger,  
[25] kike or faggot that, in your professional

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**Butters**

- [1]  
[2] opinion, you believed was offensive and you  
[3] opened a dictionary today and that word weren't  
[4] listed with a usage label, would you think it  
[5] appropriate as a linguist to write a letter to a  
[6] dictionary editor to express your point of view?  
[7] **A:** I certainly think it would be  
[8] appropriate, yes.  
[9] **Q:** Would that be sociopolitical pressure?  
[10] **A:** Certainly.  
[11] **Q:** You testified earlier concerning the  
[12] secondary meaning on several occasions.  
[13] **A:** It would also be professional  
[14] pressure, I think, because it would be something  
[15] coming from within the framework of the science  
[16] of dictionary making. And I think that  
[17] privileges it somewhat beyond the sociopolitical  
[18] pressure. That is, I would feel it would also be  
[19] justified for me to write a letter saying, I  
[20] think you've gone too far with this word redskin  
[21] by labeling it derogatory.  
[22] **Q:** Have you done that, have you sent such  
[23] a letter -  
[24] **A:** No, I haven't about.  
[25] **Q:** - about redskin?

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**Butters**

- [1] **A:** No.  
[2] **Q:** You testified on a couple of occasions  
[3] earlier concerning the concept of secondary  
[4] meaning. And with respect to the word redskin,  
[5] if somebody is watching a western movie, an old  
[6] western and hears the word redskin, is it your  
[7] professional opinion that they would associate  
[8] that term with the professional football team?  
[9] **A:** Are you speaking of standard  
[10] mainstream speakers who are adults?  
[11] **Q:** Yes.  
[12] **A:** I think probably not. I think it  
[13] would be unlikely in the context that you've  
[14] described.  
[15] **Q:** Right. One watching such a movie  
[16] would obviously think it related to American  
[17] Indians, correct?  
[18] **A:** Describe it again.  
[19] **Q:** Watching a western, an old western  
[20] movie where that term is used.  
[21] **A:** The term redskin in that  
[22] environment -  
[23] **Q:** We saw a bunch of redskins outside of  
[24] town.  
[25]

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**Butters**

- [1]  
[2] **A:** I think that would be synonymous with  
[3] Indian in those - in that environment.  
[4] **Q:** And a significant number of Americans  
[5] still see westerns, to your knowledge?  
[6] **A:** Certainly. I mean, that seems to be  
[7] common knowledge, yes.  
[8] **MR. AARON:** I'd like to have marked as  
[9] Butters Exhibit 16 a document with  
[10] handwriting at the top "Preliminary Draft".  
[11] **MS. FLYNN:** Off the record for a  
[12] second.  
[13] (Recess taken.)  
[14] **MR. AARON:** We'll mark two documents  
[15] that say "Preliminary Draft". One will be  
[16] 16 and one will be 17. Exhibit 16 will be  
[17] the June 6, the one that has a June 6 date.  
[18] Exhibit 17 will be the one that is the June  
[19] 7th date.  
[20] (Butters Exhibits 16 and 17,  
[21] Preliminary drafts, marked for  
[22] identification, as of this date.)  
[23] **Q:** Professor Butters, you have before you  
[24] documents that have been marked as Butters  
[25] Exhibits 16 and 17. Could you identify these,

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**Butters**

- [1] please?  
[2] **A:** These are earlier stages of my -  
[3] intermediate stages of my report.  
[4] **MR. AARON:** I'd like to turn now to a  
[5] document, the cover of which at the top  
[6] has - actually, the bottom left says, "List  
[7] of Records, Database: WorldCat", C-A-T,  
[8] then it says, "Search: ti:redskins FOUND 264  
[9] records".  
[10] **THE WITNESS:** Right.  
[11] **MR. AARON:** It's a document consisting  
[12] of 22 pages. That will be Butters Exhibit  
[13] 18.  
[14] (Butters Exhibit 18, Document  
[15] consisting of 22 pages, marked for  
[16] identification, as of this date.)  
[17] **Q:** Professor Butters, you have before you  
[18] what's been marked as Butters Exhibit 18. Can  
[19] you identify that document?  
[20] **A:** Yes. This is the list that I spoke of  
[21] earlier this day, earlier today. And this is a  
[22] list of books and articles which a search through  
[23] the Duke University library Internet access  
[24] yielded.  
[25]

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**Butters**

- [1]  
[2] **Q:** This search found 264 records?  
[3] **A:** That - that seems to be correct, yes.  
[4] **Q:** Your report talks about over 300  
[5] entries. Were the materials that we covered -  
[6] I'm referring to paragraph 15 of your report  
[7] which was marked in the Barnhart deposition as  
[8] Exhibit 5. Am I correct that the additional  
[9] entries that would add up to get the number over  
[10] 300 are reflected in the materials that were  
[11] previously marked as part of Plaintiff's Exhibit  
[12] 10?  
[13] **A:** I'm not sure, frankly. These 264  
[14] records turned up on one search. I believe there  
[15] may have been entries that turned up on other  
[16] searches or searches of other on-line  
[17] bibliographies. As you know, this says a certain  
[18] search of several on-line bibliographies and  
[19] other resources. So I'm not sure whether - what  
[20] brought that 264 up above 300. This is the core  
[21] and then there are other titles as well.  
[22] **Q:** And other titles that we've seen in  
[23] the previous folder of materials that have been  
[24] marked as exhibits, correct?  
[25] **A:** Yes.

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**Butters**

- [1]  
[2] **Q:** Let me word the question this way.  
[3] Are there any other documents that you're aware  
[4] of that you refer to that aren't reflected in  
[5] some manner in the materials you provided today?  
[6] **A:** There are no documents in my  
[7] possession. It's possible that I found some  
[8] titles on the Internet which I didn't download  
[9] the - some of them may have been additional  
[10] Washington Redskins titles. Some of them may  
[11] have been additional James Fenimore Cooper, yet  
[12] another edition of "Redskins". And I'm not  
[13] really sure at this point what brought this 264  
[14] above 300, but it was above 300 entries that I  
[15] found.  
[16] **Q:** Did you actually read all of the  
[17] over-300 entries?  
[18] **A:** I read the titles.  
[19] **Q:** Not the complete works?  
[20] **A:** Certainly not.  
[21] **Q:** Did you make an attempt to skim each  
[22] of the over-300 works or at least look at them?  
[23] **A:** On - no, I'm - I looked at  
[24] representative sampling of the titles.  
[25] **Q:** And how did you perform that sampling?

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**Butters**

- [1]  
[2] **A:** I eliminated everything that had to do  
[3] with football. I made my initial survey of  
[4] things which were available to me in the Duke  
[5] University library. And from those it was really  
[6] pretty much a random sample.  
[7] **Q:** Is it your position,  
[8] Professor Butters, that in all of the works that  
[9] you reviewed, the term redskin is used as a  
[10] neutral synonym for American Indian?  
[11] **A:** Yes, neutral in the sense of - that  
[12] we defined earlier, that is, on a scale of - on  
[13] a cline of - from pejoration to amelioration.  
[14] It's a relative neutral term.  
[15] **Q:** It falls in the middle?  
[16] **A:** Right, neither good nor bad.  
[17] **Q:** Is it a respectful synonym, is that a  
[18] fair statement, in your professional opinion?  
[19] **A:** It's an informal term.  
[20] **Q:** Is it respectful, in your professional  
[21] opinion, a respectful synonym for an American  
[22] Indian?  
[23] **A:** It's as - in and of itself, it's as  
[24] respectful as Indian.  
[25] **Q:** Did you conduct any search of the

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**Butters**

- [1]  
[2] Stanford University database?  
[3] **A:** Which Stanford University database?  
[4] **Q:** Any Stanford University database,  
[5] library database.  
[6] **A:** I don't think so. I didn't go to  
[7] Stanford University. If something came up on the  
[8] screen that got me into the Stanford library, I  
[9] don't remember it specifically.  
[10] **Q:** And what about Berkeley, any search of  
[11] the Berkeley database?  
[12] **A:** The same answer.  
[13] **MR. AARON:** I'd like to have marked as  
[14] the next exhibit Butters Exhibit 19, a  
[15] document that consists of three pages. In  
[16] the upper-left appears the word "Record" and  
[17] then a number symbol 1.  
[18] (Butters Exhibit 19, Document  
[19] consisting of three pages, marked for  
[20] identification, as of this date.)  
[21] **Q:** Professor Butters, can you identify  
[22] what's been marked as Butters Exhibit 19?  
[23] **A:** Yes. These are - this is a listing  
[24] of books in the Duke University library which are  
[25] in a file in my computer. I believe we discussed



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**Butters**

- [1]  
[2] these earlier. This is redundant.  
[3] **Q:** Okay. Going to the last folder of  
[4] materials -  
[5] **A:** Yes.  
[6] **Q:** - there's an expert disclosure of  
[7] Ivan Ross. I would just like to show you what  
[8] was marked yesterday at Mr. Barnhart's deposition  
[9] and just have you verify that it was marked as  
[10] Barnhart Exhibit 14, that is, a report without  
[11] exhibits, that the report that was in your file  
[12] was the same report that has been marked in the  
[13] prior deposition. This way I don't need to mark  
[14] the copy from your file.  
[15] **A:** The only difference is that -  
[16] **Q:** Yours has some exhibits, that is  
[17] right.  
[18] **A:** Mine has the table of data.  
[19] **Q:** Right. But in terms of the text of  
[20] the report, the first 10 pages, it's the same,  
[21] correct?  
[22] **A:** Right. And I have two exhibits as  
[23] well.  
[24] **Q:** Yes. You had been provided, had you  
[25] not, with the complete document?

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**Butters**

- [1]  
[2] **A:** That's correct.  
[3] **Q:** And this is the raw survey about which  
[4] you testified earlier today, correct?  
[5] **A:** Right.  
[6] **MR. AARON:** What appears next in this  
[7] folder is a collection of material that's  
[8] clipped together, the cover of which is  
[9] entitled, "The American Heritage College  
[10] Dictionary, 3rd Edition".  
[11] **THE WITNESS:** Yes.  
[12] **MR. AARON:** I'd like to have that  
[13] group of materials marked as Butters Exhibit  
[14] 20, please.  
[15] (Butters Exhibit 20, Collection of  
[16] materials, marked for identification, as of  
[17] this date.)  
[18] **Q:** Professor Butters, you have before you  
[19] what's been marked as Butters Exhibit 20. Can  
[20] you identify what's included in this packet?  
[21] **A:** This is the prefatory material - some  
[22] of the prefatory material from the American  
[23] Heritage College Dictionary, 3rd Edition, and  
[24] Xeroxes of pages from that dictionary with  
[25] definitions circled for derogatory, disparaging,

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**Butters**

- [1]  
[2] almost all - all of the words that have Indian  
[3] as a part of them, Indian as a part of them, the  
[4] entry for Native American and the usage note  
[5] there which is circled on that particular page.  
[6] The page for offensive and the definition of that  
[7] is circled and the definition for redskins from  
[8] the American Heritage 3rd Edition, that page is  
[9] duplicated and that is circled.  
[10] **Q:** And is there anything else that's part  
[11] of that exhibit?  
[12] **A:** Just a stick-on note that says - I'm  
[13] sorry, that was - yes, I already commented on  
[14] that.  
[15] **Q:** Did you? If you did, I missed it.  
[16] There is a excerpt from an article by Geoffrey  
[17] Nunberg?  
[18] **A:** This is part of the prefatory material  
[19] for the dictionary.  
[20] **Q:** I apologize. So that page that has  
[21] Mr. Nunberg's name on it is actually part of the  
[22] prefatory material for the dictionary?  
[23] **A:** Yes.  
[24] **Q:** I apologize.  
[25] **A:** No problem.

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**Butters**

- [1]  
[2] **Q:** All right. Next in your folder is a  
[3] copy of the subpoena in this case which has  
[4] already been - cover page. But that's already  
[5] been marked -  
[6] **A:** Yes.  
[7] **Q:** - so I'm not going to mark that.  
[8] Could you please describe what the next item is  
[9] in the folder. It appears to be a copy of your  
[10] report. My question is, do you know if this is a  
[11] prior draft because I see handwriting on it?  
[12] **A:** This is a copy of my report that  
[13] actually came to me from Nadine Flynn. This is  
[14] the copy that came from Nadine Flynn along with  
[15] all the other reports, as my report was included  
[16] with the other reports, Mr. Nunberg's, Mr. Ross',  
[17] Mr. Barnhart's, et cetera.  
[18] The handwriting here - on page 7,  
[19] there are two call numbers from the Duke  
[20] University library for works that are mentioned.  
[21] On page 8, there are other call  
[22] numbers. A Jean Dutourd, J-E-A-N, D-U-T-O-U-R-D  
[23] book. I was unable to find any - to find it in  
[24] any library. There does seem to be a version  
[25] written in French that's at the University of

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**Butters**

[1]  
[2] North Carolina at Chapel Hill library, but I  
[3] didn't go check that out.  
[4] On page 9, there are two more  
[5] reference numbers for these volumes in the Duke  
[6] University library. There's also a correction to  
[7] item N, Jerry Hatfield's "Illustrated Indian  
[8] Motorcycle Buyer's Guide: All the Redskins from  
[9] 1901". "Illustrated Indian Motorcycle Buyer's  
[10] Guide: All the Iron Redskins from 1901" is what  
[11] it should have said, I think. So that's just a  
[12] correction that I made after the report had  
[13] been - I also found a typo on page 10, three -  
[14] nine lines up. Their scholarly historical works  
[15] of 1971 and 1975 respectively is what it should  
[16] have said. I've been an editor for so many years  
[17] that I compulsively correct everything that I put  
[18] my hands on.  
[19] Q: Why did you put call letters on here,  
[20] on the document itself?  
[21] A: So that I could go check these books  
[22] out.  
[23] Q: Had you not checked these books out  
[24] before?  
[25] A: That's correct.

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**Butters**

[1] Q: Okay.  
[2] A: On page 11, again, more compulsive  
[3] editing. In my handwriting, I point out that  
[4] John L. Joe is not only past president of the  
[5] American Dialect Society, but also current  
[6] president of the DSNB which is the Dictionary  
[7] Society of North America. But that's just -  
[8] that's not in the original report, it's just  
[9] something that I probably would have said if I  
[10] had had somewhat more time.  
[11] Then attached to that is a copy of my  
[12] CV which we've already looked at.  
[13] MR. AARON: Yes. I'd like to have  
[14] that version of the report marked as Butters  
[15] Exhibit 21, please.  
[16] (Butters Exhibit 21, CV of Professor  
[17] Butters, marked for identification, as of  
[18] this date.)  
[19] Q: Following in the folder is the expert  
[20] disclosure for Mr. Nunberg, correct?  
[21] A: Yes.  
[22] Q: Also attached in the same clip is the  
[23] expert disclosure for Arlene Hirschfelder.  
[24] Perhaps we can discuss Ms. Hirschfelder first. I

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**Butters**

[1]  
[2] don't see any handwriting on that document. Did  
[3] you read Ms. Hirschfelder's report?  
[4] A: Yes, I did. I read it at the time  
[5] that the reports were sent to me. I haven't read  
[6] it - I haven't reread it.  
[7] THE WITNESS: I'm going to have to  
[8] take another break. I'm sorry.  
[9] MR. AARON: Sure, sure.  
[10] (Recess taken.)  
[11] Q: Referring back to the expert  
[12] disclosure for Arlene Hirschfelder, you stated  
[13] that you had read her report at the time it was  
[14] provided to you by White & Case?  
[15] A: Yes, I read - I read her report  
[16] rather quickly at the time that it was delivered  
[17] to me.  
[18] Q: Do you have a professional opinion as  
[19] to the accuracy of the conclusions drawn?  
[20] A: Not at this time.  
[21] MR. AARON: I'd like to have marked as  
[22] Butters Exhibit 22 a copy of the expert  
[23] disclosure for Geoffrey Nunberg, upon which  
[24] appears certain handwriting that I believe  
[25] is that of Professor Butters'.

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**Butters**

[1] (Butters Exhibit 22, Expert Disclosure  
[2] for Geoffrey Nunberg, marked for  
[3] identification, as of this date.)  
[4] Q: Professor Butters, we had discussed  
[5] earlier today the fact that you had gone through  
[6] Mr. Nunberg's report and made certain handwritten  
[7] notations on it. And my question is, what  
[8] portions of Mr. Nunberg's report do you disagree  
[9] with or wish to comment upon?  
[10] A: Would it be best to take this one page  
[11] at a time?  
[12] Q: Please.  
[13] A: On page 2, item 4, his assertion is  
[14] that denotative terms do not have connotations.  
[15] A denotative term, he says, describes a  
[16] phenomenon without suggesting significant  
[17] additional meanings, et cetera.  
[18] I'm surprised at this. This seems to  
[19] be an unusual stance for a linguist to take. The  
[20] normal view is that all words have connotations  
[21] of some sort or another.  
[22] He says that horse, for example, has  
[23] no connotations, and I think that this is simply  
[24] not true. Horse has connotations, for example,

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[1] **Butters**  
[2] of swiftness. Paradoxically, horse also  
[3] sometimes has connotations of clumsiness. And  
[4] it's not true, then, that there are such words  
[5] that have -- that do not have significant  
[6] additional meanings.  
[7] **Q:** And --  
[8] **A:** I would dispute his contrast between  
[9] denotative terms and connotative terms. And I  
[10] would say, really, there's no distinction. All  
[11] terms have connotations.  
[12] **Q:** The handwriting to the left of item 4,  
[13] what does that say?  
[14] **A:** It says, "Horse has connotations and  
[15] associations; compare horse and pig".  
[16] **Q:** Okay.  
[17] **A:** I have a question mark by item 6. I  
[18] understand Mr. Nunberg did not actually write  
[19] this; is that correct?  
[20] **MS. FLYNN:** He's asking the  
[21] questions. You can't ask him questions.  
[22] **THE WITNESS:** Okay, all right.  
[23] Sorry.  
[24] **A:** The reason I ask that is I'm wondering  
[25] if I should say Mr. Nunberg says or the persons

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[1] **Butters**  
[2] who prepared this document say.  
[3] **Q:** It is -- although I am not testifying  
[4] as you've communicated, it is my understanding  
[5] that this report was prepared by  
[6] Professor Nunberg.  
[7] **A:** All right.  
[8] **Q:** Having said that, I am not testifying  
[9] nor am I under oath and nor am I competent to  
[10] testify as to that matter.  
[11] **A:** Excuse me. All right. Well, item 6  
[12] of Professor Nunberg's report says, "A word may  
[13] be said to be 'disparaging' if it ascribes  
[14] features, qualities, or characteristics that are,  
[15] in the mind of the speaker or the audience,  
[16] negative."  
[17] I have two problems with this. One is  
[18] relatively minor, and that is words do not  
[19] ascribe features, qualities or characteristics.  
[20] I think that's more -- that's clarified when he  
[21] says in the mind of the speaker. That is, human  
[22] beings ascribe features, qualities and  
[23] characteristics to words, words do not do so in  
[24] and of themselves.  
[25] Secondly, I would dispute his claim

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[1] **Butters**  
[2] here that a word may be said to be disparaging if  
[3] in the mind of the audience it is negative. A  
[4] word is disparaging if in the mind of the speaker  
[5] it is disparaging. I think that's clear from the  
[6] definition of disparaging in Mr. Nunberg's own  
[7] dictionary.  
[8] **Q:** But the word disparaging in quotes  
[9] used by Professor Nunberg in the context of the  
[10] Lanham could look at it both from the mind of the  
[11] speaker and the minds of the audience, is that a  
[12] true statement, in your professional opinion?  
[13] **MS. FLYNN:** To the extent he's asking  
[14] for a legal conclusion, I object to that  
[15] question. You can answer.  
[16] **A:** Would you repeat the question,  
[17] please?  
[18] (Record read.)  
[19] **A:** It's not a true statement, in my  
[20] professional opinion, insofar as the meaning of  
[21] the Lanham would be based upon the meaning of the  
[22] word disparaging in the English language.  
[23] The same problem that I had occurs  
[24] again on page 4 where Dr. Nunberg's report,  
[25] again, tells us that words sometimes appear

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[1] **Butters**  
[2] without any connotations. This is not  
[3] necessarily true.  
[4] **Q:** And what does your handwriting say  
[5] next to the item 3?  
[6] **A:** All words have connotations.  
[7] "Whenever one more" -- I'm sorry. He says,  
[8] "Whenever more than one word is available for an  
[9] ethnic group, one word (or perhaps two) becomes  
[10] denotative without any connotative association."  
[11] I would, again, dispute that in that  
[12] all words have connotations. And his reasoning,  
[13] even so, that one word or perhaps two should be  
[14] singled out is, again, not necessarily  
[15] historically the case.  
[16] On page 6, Dr. Nunberg's report says,  
[17] "Professor Nunberg will testify that  
[18] historically and systematically, the terms  
[19] 'redskin' and 'redskins' have been used with  
[20] connotations of violence, savagery, and  
[21] oppression. Used in reference to American  
[22] Indians, 'redskin' has always been a connotative  
[23] name of disparagement."  
[24] I dispute both of these points. With  
[25] respect to the first one, the sentence would be

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**Butters**

[1]  
[2] equally true if one replaced the word red or  
[3] redskins with Indian and Indians. That is, the  
[4] terms Indian and Indians have sometimes been used  
[5] with connotations of violence, savagery and  
[6] oppression which is drawn from the context in  
[7] which the words are used.  
[8] I've been over, many times, the  
[9] improper use of disparagement with respect to the  
[10] term redskin here and I think my previous  
[11] arguments are simply – call them my previous  
[12] arguments – simply note my previous arguments  
[13] with respect to that particular sentence.  
[14] Q: And, Professor, the handwriting in the  
[15] right-hand margin, what does that say next to  
[16] item D on page 6?  
[17] A: It says, "Therefore, so too Indians",  
[18] exclamation mark, Indians underlined.  
[19] Q: Okay.  
[20] A: In the left-hand margin, it says in  
[21] ink, "Indian is also used in such contexts."  
[22] Part of Dr. Nunberg's evidence here is  
[23] that he finds examples of the word redskin used  
[24] in contexts of violence. And his conclusion,  
[25] therefore, is that redskin must be a violent word

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**Butters**

[1]  
[2] or a word with connotations of violence. This is  
[3] faulty logic. That is, that the use of the term  
[4] redskin, for example, in the example that he  
[5] cites, "ye wycked onslaughts of ye red skins",  
[6] whatever connotations of violence are drawn there  
[7] come not from the word redskin but come rather  
[8] from words with it and onslaughts. So he's  
[9] really – he's kind of backwards.  
[10] If what he says is true of redskin,  
[11] then it would have to be true of the word Indian  
[12] itself. The reason these words are used in  
[13] context of violence was that there was a good  
[14] deal of violence going on in the culture with  
[15] respect to Indians and white people, and not  
[16] because the word itself had connotations of  
[17] violence.  
[18] He says, "Almost every other citation  
[19] for the word in the Oxford English Dictionary  
[20] explicitly involves notions of oppression,  
[21] violence, or condescension."  
[22] I think the "almost" is too strong a  
[23] word. I cite in my report some examples from the  
[24] OEC which do not involve notions of oppression,  
[25] violence or condescension. It's really

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**Butters**

[1]  
[2] misleading to cite only the examples in which  
[3] those contexts are present. My handwriting in  
[4] the right hand margin says "Likewise Indian".  
[5] At the top of page 7, there's a  
[6] quotation, "1870: a strong believer of the  
[7] native virtues of the redskins, when these  
[8] savages were treated well".  
[9] My questions in the margin are, where  
[10] does this – it says "violence", question mark,  
[11] "savagery", question mark, "oppression",  
[12] question mark, all three words in quotation  
[13] marks. It seems to me that this particular  
[14] citation does not indicate violence. The native  
[15] virtues of the redskins does not indicate  
[16] savagery, per se, for the term redskins and does  
[17] not particularly indicate oppression.  
[18] Q: But it does mention the word savages,  
[19] correct?  
[20] A: It uses the term savages in – yes, in  
[21] the 19th century sense of the term savages, which  
[22] is perhaps somewhat different from the 20th  
[23] century usage. But it does – but, yes, it uses  
[24] the word savages, but that in itself doesn't –  
[25] the connotations of the one word don't bleed on

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**Butters**

[1]  
[2] over to the other one. If so, then a sentence  
[3] such as "a strong believer of the native virtues  
[4] of the Indians when these savages were treated  
[5] well" would also bleed over.  
[6] Q: At the bottom of the page near the  
[7] bottom of the page 7 there's some handwriting on  
[8] the left and right.  
[9] A: Right. Dr. Nunberg's report makes  
[10] attempts to make much of the fact that the  
[11] Encyclopedia Britanica in 1910 said redskins was  
[12] a term not in such good repute as the  
[13] corresponding German – I think it's Rothaute,  
[14] R-O-T-H-A-U-T-E, or French Peaux-Rouges,  
[15] P-E-A-U-X-R-O-U-G-E-S, which have scientific  
[16] standing. Scientific is misspelled.  
[17] All right. The only conclusion one  
[18] can make from this is, as my marginal notations  
[19] indicate, and that is that redskin is simply not  
[20] a scientific term in English the way it is in  
[21] German or in French. In other words, this  
[22] particular item does not support  
[23] Professor Nunberg's reports – the report of  
[24] Professor Nunberg at all with respect to the  
[25] connotations attached to redskin other than to

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**Butters**

- [1] [2] tell us that redskin is informal and  
[3] non-scientific.  
[4] **Q:** The word in the left-hand margin next  
[5] to "to be", what does that say with a question  
[6] mark?  
[7] **A:** It says meaning, question mark,  
[8] meaning what could the Encyclopedia Britanica  
[9] mean by saying it's not in such good repute. The  
[10] answer to which is, I think, found at the end of  
[11] the sentence, and that is, it's not in - it's  
[12] not a scientific term.  
[13] **B,** at the bottom of that page, I've  
[14] also written in the margin "compare German during  
[15] World War II" and then he started quoting.  
[16] Dr. Nunberg's report says,  
[17] "Historically, the usage of 'redskin' and  
[18] 'redskins' in the press usually has been  
[19] connected with savagery, racial inferiority, or  
[20] other negative connotations."  
[21] Then he gives us on the next page a  
[22] large number of quotations from newspapers in the  
[23] late 19th century in which the term redskin is  
[24] used interchangeably with the term Indian in the  
[25] context of violence. His argument is, somehow,

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**Butters**

- [1] [2] redskin is a derogatory term here.  
[3] My question would be, if redskin is a  
[4] derogatory term here, why isn't Indian a  
[5] derogatory term here? And the answer is neither  
[6] one of them is, they're synonyms. The informal  
[7] variant redskin and the more formal variant  
[8] Indian are used interchangeably within the  
[9] context of violence.  
[10] **Q:** And is that what your handwriting in  
[11] the upper right-hand denotes?  
[12] **A:** My handwriting says, "This proves  
[13] nothing, Indian is just as frequently found in  
[14] these contexts".  
[15] **Q:** Over on page 10, there appears some  
[16] handwriting in the left-hand margin.  
[17] **A:** Yes. It says - my handwriting says  
[18] simply, "A synonym one can find equal and  
[19] parallel usages for black and Negro".  
[20] **Q:** That's referring to the item C(1) on  
[21] page 10?  
[22] **A:** I believe so.  
[23] **Q:** Okay. And then at the bottom of the  
[24] page next to (b) there's some other handwriting  
[25] in the left-hand margin?

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**Butters**

- [1] **A:** It says "formal versus informal".  
[2] This refers to the Lone Ranger. The criminals  
[3] use the word redskin. He uses the term the Lone  
[4] Ranger. I misspoke. I should have said the Lone  
[5] Ranger uses the term Indian. The Lone Ranger is  
[6] being set up here as a role model for the  
[7] children who listen to the radio program, and the  
[8] Lone Ranger speaks in incredibly formal English  
[9] at all times. The Lone Ranger never says  
[10] running - never says runnin' dropping the G, he  
[11] always says running. He uses very formal  
[12] English, and it's not surprising that he would  
[13] use the formal variant and the robbers would use  
[14] the informal variant.  
[15] On page 11, Dr. Nunberg's report says  
[16] that he cited or he searched Dialog Information  
[17] Services and found several hundred instances of  
[18] the word redskin used to refer to Indians as  
[19] opposed to potatoes or the football team. None  
[20] of these appearances is denotatively used in a  
[21] neutral way to refer to Indian.  
[22] I've written in the margin "formal  
[23] versus informal", suggesting that Dr. Nunberg has  
[24] not taken that aspect of the language into  
[25]

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**Butters**

- [1] [2] account.  
[3] On page 12, there seems to be an  
[4] error. Doctor Nunberg's report says,  
[5] "Dictionaries since 1960 confirm this fact."  
[6] The earliest dictionary that he cites comes from  
[7] 1967, so that's just - he - the heading (b)  
[8] would seem to indicate early 1960s citation - an  
[9] early 1960s, rather than the late 1960s which  
[10] seems to be supported by the facts.  
[11] My handwriting in the left-hand margin  
[12] of the bottom of page 12 says, "A definition for  
[13] which he was, in some sense, responsible  
[14] himself." The suggestion, in my mind, being that  
[15] Professor Nunberg has found things in his own  
[16] dictionary to agree with himself. This is not -  
[17] not an indication that Dr. Nunberg is an evil  
[18] man.  
[19] On page 13, I think there are some  
[20] really - I think there's a really serious  
[21] problem with Dr. Nunberg's use of the term  
[22] disparaging and the term offensive  
[23] interchangeably. I've circled the word  
[24] disparaging in item 2. I've circled the word  
[25] offensive in item (a). He seems to be using them

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**Butters**

[1] **Butters**  
[2] interchangeably. The margin – the note in the  
[3] margin, there's an equal sign with a slash  
[4] through it indicating these terms are not equal.  
[5] **Q:** For the reasons you discussed earlier?  
[6] **A:** Correct. And at the bottom of the  
[7] page, I wrote, "Disparaging does not equal  
[8] offensive."  
[9] On page 14, item 1, I've drawn a  
[10] semicircle around 1 with four exclamation marks  
[11] off to the side. Dr. Nunberg's report says, "The  
[12] intention of the speaker is not what determines  
[13] whether the subject is honored by the use or  
[14] whether the term is disparaging".  
[15] This is most surprising in view of the  
[16] dictionary definition of disparaging which one  
[17] finds in Dr. Nunberg's own dictionary. The  
[18] intention of the speaker, I would maintain, is  
[19] what determines whether or not something is  
[20] disparaging.  
[21] Again, on this page, he inter – he's  
[22] so begging the question here by then going on to  
[23] use the term offensive and disparaging  
[24] interchangeably. At the bottom of page 14, I've  
[25] circled the phrase "in fact" and written, "How is

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**Butters**

[1] **Butters**  
[2] this a linguistic judgment?"  
[3] And, finally, on page 15, Dr. Nunberg  
[4] writes, "Based on the wide-scale protest by  
[5] Native Americans, it is clear that Native  
[6] Americans do not feel honored."  
[7] And I've written in the margin,  
[8] "Some" – that is, those who are participating  
[9] in what he alleges are wide-scale protests – and  
[10] in the margin I've written "And some do".  
[11] **Q:** What does that refer to "And some do"?  
[12] **A:** That some do feel honored by the use  
[13] of the term with relationship to the Washington,  
[14] D.C. football team.  
[15] **Q:** But it's not your position that some  
[16] Native Americans feel honored by association with  
[17] the Washington Redskins, or is it?  
[18] **A:** In writing this marginal comment, my  
[19] conjecture was that, certainly, some do.  
[20] **Q:** Some Native Americans do –  
[21] **A:** That's correct.  
[22] **Q:** – feel honored? Okay. Are you aware  
[23] of any Native Americans that are associated with  
[24] the Washington Redskins football organization?  
[25] **A:** At the present time, I know very

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**Butters**

[1] **Butters**  
[2] little about the Washington Redskins  
[3] organization, per se.  
[4] **Q:** Are you aware, at any time, of Native  
[5] Americans being associated with that football  
[6] organization?  
[7] **A:** Certainly, at the beginning of the  
[8] football team's history, yes. Again, I'm – I'm  
[9] remembering things that I read several months  
[10] ago. But there were Native Americans associated  
[11] with the team and some conjecture that, indeed,  
[12] this had – this played a large role in the  
[13] initial naming of the football team.  
[14] **Q:** And it's your professional opinion  
[15] that those persons might feel honored by use of  
[16] the term Redskins in the name of the team?  
[17] **A:** Well, I'm not sure I can give a  
[18] professional opinion as a linguist about just  
[19] such issues which, in fact, that's what I was  
[20] attempting to take issue with respect to  
[21] Mr. Nunberg's statement here.  
[22] **Q:** That's fair. I see a question mark  
[23] out in the left-hand margin next to item (c) on  
[24] page 15. What does that signify?  
[25] **A:** The word present is underlined in the

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**Butters**

[1] **Butters**  
[2] question mark as, again, conjectural. "Past and  
[3] present association of the team's name with  
[4] clearly comical and exaggerated stereotypes of  
[5] American Indian (in warpaint, and so on) does no  
[6] honor to Native Americans."  
[7] And this is – this is highly  
[8] speculative and subjective. Again, I've never  
[9] been to a Washington Redskins – I've never been  
[10] to a professional football game and I don't know  
[11] what still goes on, so – but the – for a  
[12] linguist to make a statement that says past and  
[13] present association, and it's clearly comical,  
[14] seems to me to begin to step over the bounds  
[15] particularly with respect to the present time.  
[16] **Q:** Okay.  
[17] **MR. AARON:** I just want to go off the  
[18] record a second.  
[19] (Discussion off).  
[20] **Q:** Professor Butters, you testified  
[21] earlier concerning the report done by  
[22] Mr. Barnhart and we deferred questions concerning  
[23] what criticisms, if any, you had of the report of  
[24] Mr. Barnhart so that you could have it before  
[25] you, the copy that was in your folder. You now

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**Butters**

- [1]  
[2] have before you the copy of that report that was  
[3] in your folder. And my question is, what  
[4] criticisms of the report, if any, do you have?  
[5] A: I still have really nothing to say  
[6] about this.  
[7] Q: You agree with the conclusions drawn  
[8] by Mr. Barnhart?  
[9] A: Yes. I really don't have any  
[10] criticisms to make. I think that's a splendid  
[11] report. I concur fully with his conclusions.  
[12] Q: Based upon the numerous articles  
[13] you've read, the primary research that you've  
[14] done and all the work you've done in connection  
[15] with this matter, does it remain your view that  
[16] you would feel comfortable using the term *redskin*  
[17] in referring to a Native American in his or her  
[18] presence?  
[19] A: This -  
[20] (Brief interruption.)  
[21] A: This is a - not quite accurate  
[22] paraphrase, I believe, of my thoughts on the  
[23] matter. I would - I can imagine circumstances  
[24] under which I would be uncomfortable using  
[25] this - using the word *redskin* in the presence of

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**Butters**

- [1]  
[2] a Native American. And I can imagine  
[3] circumstances under which I would be quite  
[4] comfortable using the term.  
[5] Q: In conducting primary research with  
[6] respect to applying a usage label to a word, is  
[7] it relevant that the word appears in a context  
[8] where disparaging comments are made about that  
[9] word?  
[10] A: That's really too hypothetical a  
[11] question. I mean, it might be - anything is  
[12] possible.  
[13] Q: Let me try to make it a little more  
[14] specific.  
[15] In Professor Nunberg's report - let  
[16] me refer you to the material on pages 8 and 9,  
[17] items 1 through 13. You had indicated earlier -  
[18] and I believe I'm going to accurately  
[19] characterize your testimony. And if I don't,  
[20] please correct me. You indicated earlier that  
[21] the word *redskin*, for example, on item 4 was  
[22] itself neutral, it was the word *greasy* that had a  
[23] derogatory aspect to it. But is that right, is  
[24] that an accurate characterization of your prior  
[25] testimony?

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**Butters**

- [1]  
[2] A: Yes, the word *greasy* is what -  
[3] Q: My question is this: Looking at all  
[4] of these excerpts that Professor Nunberg has in  
[5] here, is it relevant to you, in your professional  
[6] opinion, in evaluating whether to apply a usage  
[7] label to the word *redskin*, that *redskin* is used  
[8] in a derogatory context often? Putting aside the  
[9] fact you think the word *redskin* is, in and of  
[10] itself, neutral.  
[11] A: Well, there are several reasons why  
[12] it's irrelevant. One is that what we're looking  
[13] at here is late 19th century usages which have no  
[14] relevance whatsoever to a late 20th century  
[15] definition. The cultural context in which these  
[16] were used was a context of considerable  
[17] violence. Most of these reports report upon  
[18] violent interchanges and, therefore, this is -  
[19] these particular reports are weighed against the  
[20] backgrounds of violence. So one can draw very  
[21] little conclusion from these examples as to what  
[22] the term, apart from that highly-charged social  
[23] environment, would admit.  
[24] The great fallacy in the logic of this  
[25] report is that the term *Indian* is used

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**Butters**

- [1]  
[2] interchangeably with *redskins* and the author of  
[3] the record prefers to select only one of these  
[4] two words as pejorative and the - and to say  
[5] that the negative connotations do not attach to  
[6] the other one.  
[7] There's no logical reason why, if it  
[8] attaches to the one it shouldn't attach to the  
[9] other. What one needs to do is to go look at  
[10] other examples within the context of the  
[11] culture. If this were the only way that the term  
[12] *redskin* were used, that would be - well, since  
[13] *Indian* is used in the same context, one could  
[14] draw very little conclusions from it. But one  
[15] finds other examples within the culture of  
[16] neutral usages of the term *redskin*, and this  
[17] helps us to place how the term *redskin* is used.  
[18] Q: Is it a neutral usage when *redskin* is  
[19] referred to with respect to the physical  
[20] attributes of a person?  
[21] A: It certainly very often could be.  
[22] It's the scientific term in French, as I  
[23] understand it, to this day.  
[24] Q: It could be, but isn't it also true  
[25] that reference to physical attributes, for

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**Butters**

[1]  
[2] example, would for the African-American male  
[3] frequently be pejorative or are pejorative?  
[4] **A:** Again, this depends entirely on the  
[5] context. Again, there's a huge number of  
[6] Afro-Americans today who prefer the term black as  
[7] a term - as a term of self-reference.  
[8] **Q:** But referring to a redskin as sinewy,  
[9] S-I-N-E-W-Y, referring to physical attributes,  
[10] can be a pejorative reference, couldn't it?  
[11] **A:** You're talking about the 1699  
[12] reference?  
[13] **Q:** The reference in your report.  
[14] **A:** From the Oxford English Dictionary  
[15] which comes from - I think that's one of the  
[16] earliest references. Sinewy is - if I remember  
[17] correctly, he then goes on to say - to make a  
[18] comparison to this Indian's muscularness with his  
[19] own father's muscularness. So in that particular  
[20] context it's intended as a positive word and,  
[21] indeed, the whole context is, in that particular  
[22] context, positive.  
[23] **Q:** You said one of the reasons why it  
[24] wasn't relevant, why these various items set  
[25] forth on pages 8 and 9 of Dr. Nunberg's report

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[1]  
[2] weren't relevant to the issue of applying a usage  
[3] label was the fact these occurred at a time long  
[4] ago when there was violence. Was there any other  
[5] reason why they're not relevant?  
[6] **A:** The violence is a part of the social  
[7] context in which these particular headlines are  
[8] drawn. But if you look at one of the most  
[9] popular authors of the 19th century, James  
[10] Fenimore Cooper, who uses the term redskin over  
[11] and over again to refer to Native Americans in  
[12] what Mark Twain, at the same time, found to be a  
[13] ludicrously positive way, I think that that  
[14] evidence speaks for itself. When one goes into  
[15] contexts outside of violence, one finds the term  
[16] redskin being used as, essentially, a neutral  
[17] synonym for Indian.  
[18] **Q:** You believe that Cooper was being  
[19] respectful of Indians when he used the word  
[20] redskin?  
[21] **A:** Certainly.  
[22] **Q:** And you believe Twain's thought was  
[23] being -  
[24] **A:** Hyper -  
[25] **Q:** - was being respectful of the Indians

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**Butters**

[1]  
[2] when he used that term?  
[3] **A:** The answer is yes.  
[4] **Q:** Was there any other reason why you  
[5] thought that the existence of these selections  
[6] was not relevant to the issue of applying a usage  
[7] label to the term redskin? You named one  
[8] reason. I asked you and you said there are  
[9] several, or I thought you indicated there were  
[10] others. Are there any others?  
[11] **A:** I think there are multitudinous  
[12] examples of the term redskins in the 19th century  
[13] which then counter this, some of which I named in  
[14] my report. But the James Fenimore Cooper  
[15] examples are probably the most - in some ways,  
[16] these are exceedingly prominent.  
[17] (Included on next page to include  
[18] jurat.)  
[19]  
[20]  
[21]  
[22]  
[23]  
[24]  
[25]

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[1]  
[2] **MR. AARON:** I have no further  
[3] questions.  
[4] **THE WITNESS:** Thank you.  
[5] **MS. FLYNN:** That's it.  
[6] (Time noted: 6:00 p.m.)  
[7]  
[8]  
[9]

**RONALD R. BUTTERS**

[10]  
[11]  
[12]  
[13]  
[14] Subscribed and sworn to before me  
[15] this \_\_\_\_ day of \_\_\_\_, 1997.  
[16]  
[17]  
[18]  
[19]  
[20]  
[21]  
[22]  
[23]  
[24]  
[25]



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[1]  
[2] CERTIFICATE  
[3] STATE OF NEW YORK )  
[4] : ss.  
[5] COUNTY OF NEW YORK )  
[6]  
[7] I, TAMI H. TAKAHASHI, RPR and  
[8] Notary Public within and for the State of  
[9] New York, do hereby certify:  
[10] That RONALD R. BUTTERS, the witness  
[11] whose deposition is hereinbefore set forth,  
[12] was duly sworn by me and that such  
[13] deposition is a true record of the testimony  
[14] given by the witness.  
[15] I further certify that I am not  
[16] related to any of the parties to this action  
[17] by blood or marriage, and that I am in no  
[18] way interested in the outcome of this  
[19] matter.  
[20] IN WITNESS WHEREOF, I have hereunto  
[21] set my hand this 14th day of January, 1997.  
[22]  
[23]  
[24] TAMI H. TAKAHASHI  
[25]

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## Lawyer's Notes

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**In The Matter Of:**

*SUSAN SHOWN HARJO v.  
PRO-FOOTBALL, INC.*

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*ROBERT BUTTERS  
April 10, 1997*

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*Original File rb041097.v1, 112 Pages  
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U.S. PATENT & TRADEMARK OFFICE  
BEFORE THE TRADEMARK & APPEAL BOARD  
SUSAN SHOWN HARJO, RAYMOND D.  
APODACA, VINE DELONIA, JR., NORBERT S.  
HILL, JR., MATEO ROMERO, WILLIAM A.  
MEANS and MANLEY A. BEGOY, JR.,

Plaintiffs,

-against-

PRO-FOOTBALL, INC.,

Defendant.

April 10, 1997

9:40 a.m.

Continued Deposition of ROBERT BUTTERS,  
held at the offices of White & Case, Esqs.,  
1155 Avenue of the Americas, New York, New York,  
pursuant to Notice, before Judith A. Frost, a  
Notary Public of the State of New York.

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[1]  
[2] APPEARANCES:  
[3]  
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[15] -and-  
[16] JOHN PAUL REINER, ESQ.  
[17] -and-  
[18] CLAUDIA BOGADANOS, ESQ.  
[19]  
[20]  
[21]  
[22]  
[23]  
[24]  
[25]

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[1]  
[2] ROBERT BUTTERS, called as a  
[3] witness, having been previously sworn by a  
[4] Notary Public, was examined and testified  
[5] as follows:  
[6] **EXAMINATION BY**  
[7] **MR. REINER:**  
[8] **Q:** Would you state your name and address  
[9] for the record, please.  
[10] **A:** My name is Ronald Butters. I live at  
[11] 1000 L-a-m-o-n-d Avenue, in Durham, North Carolina.  
[12] **Q:** Do you recall that you had given some  
[13] prior testimony in this proceeding?  
[14] **A:** Yes.  
[15] **MR. LINDSAY:** Counsel, we have the  
[16] same stipulation with respect to that  
[17] testimony as we have had in the other  
[18] depositions in this matter?  
[19] **MR. REINER:** Yes. The first session  
[20] and this session will be both deemed.  
[21] **MR. LINDSAY:** Correct.  
[22] **Q:** By whom are you employed?  
[23] **A:** Duke University.  
[24] **Q:** What position do you hold?  
[25] **A:** I'm professor of English.

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[1] **Butters**  
[2] **Q:** Is that a full professorship?  
[3] **A:** Yes.  
[4] **Q:** For how long have you been on the  
[5] faculty at Durham?  
[6] **A:** Since September 1, 1967.  
[7] **Q:** I would like to show you Deposition  
[8] Exhibit No. 1 from your prior session, and ask you  
[9] if you recognize this document.  
[10] **A:** Yes. This is my CV as of May 1996.  
[11] **Q:** Is there anything additional that you  
[12] would like to add to your CV?  
[13] **A:** There have been a few minor changes in  
[14] terms of publication, but nothing that's really  
[15] important at this point.  
[16] **Q:** With respect to, you say "minor  
[17] publications," you mean additional publications  
[18] other than those recorded here in this deposition?  
[19] **A:** Yes, what I am thinking is that  
[20] possibly one or two items that are listed as  
[21] forthcoming have forth come. A number of other  
[22] things have been accepted I imagine. I haven't  
[23] really looked at it closely. I know that I have  
[24] done some things since May of 1996. This is an  
[25] ongoing life-long project.

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**Butters**

- [1]  
[2] **Q:** Other than possible publications, is  
[3] there anything else in Deposition No. 1 of your  
[4] curriculum vitae that you would like to have  
[5] modified in any way?  
[6] **A:** Nothing that I'm aware of.  
[7] **Q:** With respect to your work at the  
[8] university for all of these years, can you just  
[9] briefly describe your scholarship and your academic  
[10] record in terms of linguistics and the English  
[11] language?  
[12] **A:** My publications have been almost  
[13] entirely in the field of linguistics, with a  
[14] specialization in American English. I have written  
[15] on black-white speech relationships. I have written  
[16] on lexicography. I have written on American  
[17] dialects.  
[18] These are the areas that I have been  
[19] most interested in in terms of my own writing. I  
[20] have also since - let me refresh my memory by  
[21] referring to the CV to make sure that I have got  
[22] this right.  
[23] Since 1981 I have been editor of  
[24] American Dialect Society publications. From 1981  
[25] through 1995 I was editor of the Journal of American

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**Butters**

- [1] Speech.  
[2] **Q:** Would you first explain what the  
[3] discipline of linguistics is?  
[4] **A:** Linguistics is the scientific study of  
[5] language in all of its forms.  
[6] **Q:** Would you briefly describe what you  
[7] mean by "all of its forms."  
[8] **A:** Traditionally linguistics has been  
[9] divided into two large areas, historical  
[10] linguistics, and what is called synchronic  
[11] linguistics. That is the language as it is spoken  
[12] at any particular time. The two obviously interact.  
[13] Also how language is usually analyzed  
[14] in terms of its sound structure or phonology. The  
[15] structure of the language with respect to the  
[16] minimal meaningful units, which is called  
[17] morphology. These are really the pieces by which  
[18] words are put together.  
[19] Lexicology which is the study of the  
[20] lexicon, that is the word lists of a language.  
[21] Syntax, which is the way that morphemes and words  
[22] are put together into sentences.  
[23] And discourse analysis, which is  
[24] analysis of larger texts, the way sentences are put  
[25]

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**Butters**

- [1]  
[2] together into larger meaningful texts of various  
[3] kinds.  
[4] Pragmatics, which is the study of  
[5] language in actual use in conversations, the rules  
[6] that govern conversation, that sort of thing.  
[7] Dialectology and sociolinguistics,  
[8] which has to do with linguistics variation as it  
[9] relates to geographical and social variables.  
[10] That's a start.  
[11] **Q:** I would like to show you a Deposition  
[12] Exhibit No. 5 which was marked at your previous  
[13] session.  
[14] Do you recognize that document?  
[15] **A:** This is the report I submitted on June  
[16] 7, 1996.  
[17] **MR. LINDSAY:** Sir, did you say Exhibit  
[18] 5?  
[19] **THE WITNESS:** Yes, that is what it  
[20] says.  
[21] **MR. LINDSAY:** Off the record for a  
[22] moment.  
[23] (Discussion off the record.)  
[24] **Q:** Is that exhibit - I want to correct  
[25] the record. That was not an exhibit in your

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**Butters**

- [1]  
[2] previous session of your deposition that was taken,  
[3] but marked in another deposition for Mr. Barnhart.  
[4] I would like to show you Plaintiffs' Exhibit 21,  
[5] which was marked on December 20, 1996 at the Butters  
[6] deposition.  
[7] **MR. LINDSAY:** So we are clear, that is  
[8] Butters Exhibit 21.  
[9] **Q:** Is that the same as the exhibit that  
[10] you have in front of you now? Take a look, please.  
[11] Is that the same?  
[12] **A:** Would you mind if I just went through  
[13] and looked at each page and make sure that I have  
[14] got a complete and total copy here?  
[15] **Q:** Sure.  
[16] **A:** Well, I hate to do this, but there's a  
[17] slight difference. This copy doesn't have my  
[18] handwritten additions, which were notes that were  
[19] made between the time I filed this report and the  
[20] time of the deposition. They are minor and minimal,  
[21] but they are.  
[22] **Q:** Do you have a copy of the, your report  
[23] with those handwritten notes?  
[24] **A:** I have one in my file, yes.  
[25] **Q:** Would you please take it out.

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[1] **Butters**  
[2] **A:** This is the original from which the  
[3] document in, I'm sorry, I have forgotten your name.  
[4] **MR. LINDSAY:** Mr. Lindsay.  
[5] **Q:** Mr. Lindsay's notebook.  
[6] **MR. REINER:** Off the record for a  
[7] second.  
[8] **MR. REINER:** Just for the purposes of  
[9] the record, let's have this marked as Butters  
[10] Exhibit 22.  
[11] **MR. LINDSAY:** No, it would be 23.  
[12] **MR. REINER:** 23, because we just them  
[13] today 23.  
[14] **MR. LINDSAY:** You haven't marked one  
[15] yet today, but the last exhibit in my  
[16] notebook is 22.  
[17] **MR. REINER:** Excuse me, I thought it  
[18] was 21. We will have this marked as Exhibit  
[19] No. 23 for identification purposes.  
[20] (Butters Exhibit 23, document,  
[21] marked for identification as of  
[22] this date.)  
[23] **Q:** You have Exhibit 23 before you; is  
[24] that correct?  
[25] **A:** Yes.

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[1] **Butters**  
[2] **Q:** Does that conform to Exhibit No. 21 as  
[3] previously marked, with your handwritten notes?  
[4] **A:** Yes.  
[5] **Q:** Now, does that report - strike that.  
[6] As of the date the report was written,  
[7] does that accurately set forth your views concerning  
[8] work which you did in the preparation of your  
[9] report?  
[10] **MR. LINDSAY:** Objection.  
[11] **A:** Yes, it does.  
[12] **Q:** Since filing that report have you had  
[13] the occasion to see any deposition transcripts of  
[14] testimony of Mr. Nunberg?  
[15] **A:** Yes, I have.  
[16] **Q:** Did you prepare any comments in writing  
[17] concerning your review of Mr. Nunberg's testimony?  
[18] **A:** Yes, I did.  
[19] **Q:** When did you prepare such a commentary?  
[20] **A:** In late March, 1997.  
[21] **Q:** Did you, when did you provide me with a  
[22] copy of this commentary?  
[23] **A:** This morning.  
[24] **MR. REINER:** I would like to have  
[25] marked for identification a document titled

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[1] **Butters**  
[2] "Some Commentary on Nunberg Testimony," as  
[3] you just testified.  
[4] **MR. LINDSAY:** Objection, and I will  
[5] note for the record that the document is  
[6] being provided to me for the first time at  
[7] this very moment.  
[8] **Q:** How long ago did you give me this  
[9] document?  
[10] **A:** About 30 minutes ago.  
[11] **MR. LINDSAY:** Same objection.  
[12] (Butters Exhibit 24, document,  
[13] marked for identification as of this date.)  
[14] **Q:** Since giving your other deposition, did  
[15] you see a transcript of any other depositions taken  
[16] in this proceeding?  
[17] **MR. LINDSAY:** Objection.  
[18] **A:** Would you repeat the question, please?  
[19] **Q:** Since your last session of your  
[20] deposition in December, did you read any other  
[21] transcripts of any depositions taken in this  
[22] proceeding, besides Mr. Nunberg's?  
[23] **A:** No. I'm sorry, that is not true. My  
[24] mind, I also read the deposition of Susan Courtney.  
[25] That's the only other deposition I have read. I did

Page 192

[1] **Butters**  
[2] read the deposition of Susan Courtney last night.  
[3] **Q:** With respect to the report that you  
[4] filed which has been marked as Exhibit No. 21  
[5] previously and marked in this session as 23 -  
[6] **A:** Yes.  
[7] **Q:** - would you address first the question  
[8] of who prepared this report?  
[9] **A:** I prepared this report.  
[10] **MR. LINDSAY:** Objection.  
[11] **Q:** Did anybody else participate in the  
[12] writing of this report, other than yourself?  
[13] **MR. LINDSAY:** Objection.  
[14] **A:** No.  
[15] **Q:** With respect to the work that you did  
[16] in the preparation of this report, can you describe  
[17] what the sources of your research were?  
[18] **A:** My initial research, it was the first  
[19] stage, I guess, involved looking at dictionaries to  
[20] see what sorts of usage labels have been attached to  
[21] the word redskins, if any, in fairly recent  
[22] dictionaries.  
[23] Secondly, I did a look-through of two  
[24] giant boxes of materials that were furnished me by  
[25] White & Case, old newspaper clippings from the

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*Butters*

- [1] [2] thirties and forties, letters to the Redskins, and  
[3] primarily it was newspaper clippings I think.  
[4] The third stage involved the use of the  
[5] internet, first for access to the Duke University  
[6] on-line card catalog, and then a look, a scan of the  
[7] Library of Congress card catalog. And then the use  
[8] of an internet search procedure. Those were the  
[9] main avenues of researches as I recall them now.  
[10] Q: Approximately how many hours of your  
[11] time did you spend doing that?  
[12] A: In the last year, I suppose I have put  
[13] between 100 and 150 hours of research into this  
[14] project.  
[15] Q: Was that research done by you  
[16] personally?  
[17] A: Almost completely. The research really  
[18] was done completely by me. I did occasionally have  
[19] my assistant, my editorial assistant for the journal  
[20] on his own time, for which I compensated him out of  
[21] my pocket, do some Xeroxing and actually check some  
[22] books out of the Durham library for me.  
[23] Q: Did he participate in any original  
[24] research that was done for purposes of this  
[25] proceeding?

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*Butters*

- [1] A: No, he did not.  
[2] Q: Was all the research that was done,  
[3] done personally by you?  
[4] A: That is correct.  
[5] Q: Were you compensated for doing that in  
[6] this proceeding?  
[7] A: Yes.  
[8] Q: Now, would you tell us, would you  
[9] describe for us the usual - strike that.  
[10] Did your research follow the usual  
[11] procedures that you do in the study of linguistics  
[12] for checking on words?  
[13] A: Yes, it did. One item of research, one  
[14] important item of research that I neglected, to  
[15] mention in response to your previous question, was  
[16] that I did a considerable amount of research on  
[17] secondary sources.  
[18] That is, I read the works of people who  
[19] write about derogatory words, and I read a number of  
[20] articles and looked at several books involving the  
[21] work of those scholars. I have also checked myself,  
[22] read a number of books which had redskin in the  
[23] title, in order to attempt to find the context in  
[24] which this word was used within the frame of those  
[25]

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*Butters*

- [1] [2] books.  
[3] Q: With respect to the scientific  
[4] discipline utilized in linguistics, could you  
[5] characterize the type of work that you did as being  
[6] generally acceptable?  
[7] A: That is correct.  
[8] Q: Is that a standard that is generally  
[9] accepted within the linguistic discipline?  
[10] A: Yes.  
[11] Q: With respect to the use of work in  
[12] dictionaries, can you tell me what significance  
[13] labels have in conjunction with the meaning of  
[14] words?  
[15] A: Labels such as slang or derogatory are  
[16] secondary to the purposes of dictionaries; that is,  
[17] the primary purpose of a dictionary is to give the  
[18] core denotative meanings of words.  
[19] Usage labels have been attached to  
[20] dictionary entries as a sort of secondary guide.  
[21] They are really primarily of use to people, I should  
[22] think, who are learning the language from the  
[23] outside, learning the language as a second language,  
[24] and who aren't used to, who may know the denotations  
[25] of words but are less sophisticated about the

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*Butters*

- [1] [2] subtler aspects of the connotation of words.  
[3] Q: In the absence of a label in a  
[4] dictionary, does that indicate or have any  
[5] significance to a linguist?  
[6] MR. LINDSAY: Objection.  
[7] A: The absence of a label in a dictionary,  
[8] indicates that, to the editors of that dictionary at  
[9] that particular time the word was, had no  
[10] significant connotations, or at least connotations  
[11] that were not significant enough to warrant flagging  
[12] them in a dictionary.  
[13] Q: Did you find any recent usages of the  
[14] word redskins in a nominative sense, that you  
[15] believe was not in any manner disparaging?  
[16] MR. LINDSAY: Objection. Vague and  
[17] ambiguous.  
[18] A: The most recent example I found was in  
[19] the March 24, 1997 issue of The New Republic  
[20] magazine, where the word redskins appears in the  
[21] table of contents. And it appears also as the  
[22] headline of a book review.  
[23] Q: For the record, would you state what  
[24] The New Republic is?  
[25] A: The New Republic is a magazine of

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- [1] comment on politics and the arts, which I would  
[2] characterize as a relatively high-brow liberal  
[3] publication with a long and venerable history of  
[4] political liberalism.  
[5] Q: I would like to show you a document -  
[6] first I would like to have the document marked, if  
[7] you would, please, as Exhibit 25.  
[8] MR. LINDSAY: Objection, and I note  
[9] for the record that the document is being  
[10] handed to me for the first time this morning.  
[11] (Butters Exhibit 25, copy of the  
[12] March 24, 1997 edition of The New Republic,  
[13] marked for identification as of this date.)  
[14] Q: This is a copy of the March 24, 1997  
[15] edition of The New Republic to which you have just  
[16] referred?  
[17] A: That's correct.  
[18] Q: Is there some indication, is that an  
[19] excerpt from the magazine?  
[20] A: I have before me Exhibit 25, which is a  
[21] photo duplication of page 5 of The New Republic for  
[22] March 24, 1997, and pages 30 through 38, which is  
[23] the article by Joseph Koerner called Pale Face and  
[24] Redskin.  
[25]

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- [1] Professor Koerner is a professor of  
[2] fine arts at Harvard University.  
[3] Q: Did you prepare that excerpt from that  
[4] March 24 edition of The New Republic yourself?  
[5] MR. LINDSAY: You mean did he make the  
[6] photocopies?  
[7] MR. REINER: Yes.  
[8] A: I made the initial photocopy, yes.  
[9] Q: Did you select the excerpt that appears  
[10] before you now as Exhibit 25?  
[11] A: Yes, I did.  
[12] Q: Does the first page reflect in any way  
[13] the title of the article that Professor Koerner  
[14] wrote?  
[15] A: The first page is the table of  
[16] contents. It says "Joseph Koerner, Pale Face and  
[17] Redskins." It's a book review of images from the  
[18] region of the Pueblo Indians of North America by Aby  
[19] M. Warburg.  
[20] Q: Do you have any views or opinions  
[21] concerning the use of the title for this article,  
[22] Pale Face and Redskins?  
[23] A: It is an absolutely neutral use of the  
[24] term redskins. It is used in a strictly denotative  
[25]

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- [1] way.  
[2] Q: Is there anything in the article that  
[3] uses the word redskins in any disparaging way?  
[4] MR. LINDSAY: Objection, compound. And  
[5] foundation.  
[6] Q: Did you read the article?  
[7] A: Yes, I did.  
[8] Q: Did you find anything in the article  
[9] that used redskins in a disparaging way?  
[10] MR. LINDSAY: Objection. Compound.  
[11] A: No, I did not.  
[12] Q: In a denotative sense, to what did the  
[13] word redskins refer?  
[14] MR. LINDSAY: Objection. Foundation.  
[15] A: The article is about - a book about  
[16] American Indians. The term redskins in the headline  
[17] clearly focuses attention upon this aspect of the  
[18] book review which is central to the book review.  
[19] My professional opinion is that the  
[20] term redskins is a denotative, refers to American  
[21] Indians.  
[22] Q: Does it have any denotative reference  
[23] to a professional football team?  
[24] A: Not in this environment, no. Not in  
[25]

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- [1] this headline. Not in this title.  
[2] MR. LINDSAY: Objection and move to  
[3] strike the foregoing testimony with respect  
[4] to this article. It has made apparently the  
[5] assumption that the use of the word redskins  
[6] is used in the article other than in the  
[7] title, and as I have noted for the record, I  
[8] have never seen this document before. It was  
[9] handed to me moments ago.  
[10] I don't see the word redskins being  
[11] used anywhere in the article, and therefore,  
[12] to the extent that the witness has  
[13] purportedly testified that the word redskins  
[14] is not used in a disparaging manner in the  
[15] article, and other than reference, other than  
[16] to the headline for the article as he has  
[17] characterized it, I move to strike.  
[18] Q: With respect to the use of redskin in  
[19] the title, does the content of the article cause you  
[20] to have an opinion as to the reference, in the use  
[21] of the word redskins in the title of the article?  
[22] A: Yes, it does.  
[23] Q: What is that?  
[24] A: The term redskins in the title refers  
[25]



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- [1] to American Indians in a denotative way.  
[2] **Q:** Is that reference in any manner, is the  
[3] content of the article disparaging?  
[4] **A:** No.  
[5] **MR. LINDSAY:** Objection.  
[6] **Q:** You read a report by David K. Barnhart  
[7] since the preparation of the report which you filed  
[8] in this proceeding, as set forth in Exhibit 21.  
[9] **MR. LINDSAY:** Objection. Vague as to  
[10] time.  
[11] **A:** I'm sorry. I didn't understand.  
[12] **Q:** When did you prepare your report which  
[13] was marked as Exhibit 21, and again as Exhibit No.  
[14] 23?  
[15] **A:** Right. I prepared my report in the  
[16] weeks immediately preceding June 7, 1996.  
[17] **Q:** Did you consult with Professor Barnhart  
[18] in the preparation of your report?  
[19] **A:** No, I did not.  
[20] **Q:** Did you exchange any materials in the  
[21] preparation of the report?  
[22] **A:** Not to my memory.  
[23] **Q:** Did you look at Professor Barnhart's  
[24] report after June of 1996?  
[25]

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- [1] **A:** Yes, I did.  
[2] **Q:** I would like to show you a document  
[3] that was marked Deposition Exhibit No. 3 at the  
[4] deposition of Mr. Barnhart on December 19, 1996.  
[5] Would you take a look at that, please.  
[6] I would like to turn your attention, if you would.  
[7] **A:** Yes.  
[8] **Q:** Do you remember reading that report  
[9] following the submission of your report?  
[10] **A:** That's correct.  
[11] **Q:** I would like to turn your attention, if  
[12] you would, please, to page 6. I have to count the  
[13] pages. Page 6.  
[14] **MR. LINDSAY:** Off the record.  
[15] (Recess taken.)  
[16] **Q:** Would you for the record - strike  
[17] that.  
[18] Would you please refer to the entry  
[19] under the Oxford dictionary. The first entry there  
[20] I believe has the number 1699 next to it.  
[21] **A:** Yes.  
[22] **Q:** What is the quote?  
[23] **A:** "The first meeting house was solid,  
[24] made to withstand the wicked onslaughts of the  
[25]

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- [1] redskins."  
[2] **Q:** Was that a quote from a 1699 writing of  
[3] some sort?  
[4] **A:** That's the indication, that it was  
[5] from - the Oxford English dictionary dates it as  
[6] something written in 1900.  
[7] **Q:** With respect to the usage of words in  
[8] 1699, can you tell me, are you familiar with the  
[9] meaning of the word wicked in that context?  
[10] **A:** Yes.  
[11] **Q:** What would that be?  
[12] **A:** One of the meanings of wicked in this  
[13] particular era is powerful. The reading of the  
[14] sentence is "The first meeting house was solid, made  
[15] to withstand the powerful onslaughts of the  
[16] redskins."  
[17] **MR. LINDSAY:** Objection.  
[18] **Q:** At that point in the usage of the word  
[19] wicked, 1699, as used in that quotation, is there  
[20] any indication that the word wicked is a connotation  
[21] of disparagement?  
[22] **MR. LINDSAY:** Objection.  
[23] **A:** The contrast between solid in the  
[24] construction with the first meeting house, and  
[25]

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- [1] wicked, with onslaughts, clearly has the primary  
[2] identicative meaning of contrast, solid versus  
[3] powerful. The powerful onslaughts of the redskins  
[4] is contrasted with the solid construction of the  
[5] meeting house.  
[6] **Q:** Is the use of the word redskins in that  
[7] quotation indicative of any disparaging denotative  
[8] use of the word?  
[9] **A:** There's no indication of disparagement.  
[10] **Q:** Would that be in a connotative sense as  
[11] well as a denotative sense?  
[12] **A:** Definitely. Neither connotative, and  
[13] certainly not denotative.  
[14] **Q:** If you take a look at your report, that  
[15] would be that Exhibit 23 that you have before you.  
[16] Is that correct?  
[17] **A:** Yes.  
[18] **Q:** Take a look at paragraph number 7 on  
[19] page 3. Would you explain for the record in general  
[20] terms, what you did to arrive at the contents of the  
[21] report set forth in paragraph 7?  
[22] **A:** The content of paragraph 7 depends upon  
[23] my having read the entry for redskins in the compact  
[24] version of the Oxford English dictionary. That is  
[25]

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- [1]  
[2] the unabridged dictionary with supplements that was,  
[3] at least was in the late 1980s available for use  
[4] with a magnifying glass.  
[5] I read the full entry which, that  
[6] particular set of the Oxford dictionary is my  
[7] personal property. Then I also mention the work of  
[8] the sociologist, Irving Lewis Allen, and his book,  
[9] The Work of Ethnic Conflict, in this paragraph, and  
[10] discuss in support of the position I am taking here,  
[11] of some comments that Professor Allen made about the  
[12] use of the, what he calls the nickname.  
[13] MR. LINDSAY: I move to strike.  
[14] Q: With respect this paragraph 7, would  
[15] you read into the record here what you wrote.  
[16] MR. LINDSAY: Objection.  
[17] A: The full paragraph?  
[18] Q: Just the last sentence of the paragraph  
[19] at the bottom of page number three, starting with  
[20] the word "Such."  
[21] A: "Such unquestionably have been the  
[22] meanings of the term redskins in English for 300  
[23] years. That have been the only relevant meanings of  
[24] the term well into our own century, and they remain  
[25] the central meanings of the term today."

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- [1]  
[2] Q: What is your view on the central  
[3] meaning of the term today, as set forth in that  
[4] sentence which you just read?  
[5] MR. LINDSAY: Objection.  
[6] A: I am using central here in the sense  
[7] that dictionary-makers usually use the term central,  
[8] but as the historically most prominent meaning or  
[9] the connotatively primary meaning, there's a  
[10] significant, there are several secondary meanings  
[11] for the term redskins.  
[12] The most, one of which refers to a  
[13] potato, and one which reference to a peach, and one  
[14] which refers to a dallier, according to the Oxford  
[15] English dictionary, refers to a fox, and the most  
[16] important secondary meaning for redskins today in  
[17] American English is in sources as denotative, indeed  
[18] as a denotation for the Washington, D.C. redskins  
[19] football team.  
[20] Q: In a denotation sense, have you found  
[21] any materials which would indicate that the use of  
[22] the word redskins in a denotative context as a  
[23] reference to the Washington redskins football team  
[24] is disparaging?  
[25] A: None whatsoever.

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- [1]  
[2] Q: Did you find any indication that it was  
[3] deemed to be derogatory?  
[4] MR. LINDSAY: Objection with reference  
[5] to the football team. Objection.  
[6] MR. REINER: As a denotative reference  
[7] for the football team?  
[8] MR. LINDSAY: Objection.  
[9] A: Primary terms - could you repeat the  
[10] question?  
[11] Q: Let me try again. In your research did  
[12] you find - strike that.  
[13] As a result of your research, do you  
[14] have any views or opinion with respect to the word  
[15] redskins in a denotative sense as applied to the  
[16] professional football team playing in Washington,  
[17] D.C.?  
[18] MR. LINDSAY: Objection.  
[19] A: It is not derogatory when used with  
[20] reference to the Washington, D.C. football team.  
[21] Q: Is it disparaging?  
[22] A: No.  
[23] MR. LINDSAY: Objection.  
[24] Q: Is it offensive?  
[25] A: Some people have found it offensive.

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- [1]  
[2] Q: When and what time frame have you found  
[3] any indication that some people found it offensive?  
[4] MR. LINDSAY: Objection. Same  
[5] objection. Foundation. And I object to the  
[6] form.  
[7] A: Nothing before the 1960s.  
[8] Q: With respect to the 1960s to the 1980s,  
[9] did you find any research which would indicate that  
[10] this material was deemed to be offensive?  
[11] MR. LINDSAY: Objection.  
[12] A: Some dictionaries beginning in the  
[13] 1960s began to label this term offensive.  
[14] Q: Is the word offensive synonymous with  
[15] the word disparaging in the English language?  
[16] A: No.  
[17] MR. LINDSAY: Objection.  
[18] Q: What is the difference?  
[19] MR. LINDSAY: Objection.  
[20] A: The primary difference between  
[21] offensive and disparaging has to do with the intent  
[22] of the speaker as opposed to the reception of,  
[23] receptive response of the hearer.  
[24] Derogatory term means a term that when  
[25] uttered, necessarily conveys the intent to

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- [1] [2] disparage. To belittle. An offensive term is one  
[3] that whether or not the intent of the speaker is to  
[4] belittle, is taken by the hearer as distasteful.  
[5] Q: Is there anything in your research at  
[6] all that reveals that the use of the word redskins  
[7] as the name of a football team is disparaging?  
[8] MR. LINDSAY: Objection.  
[9] A: No.  
[10] Q: As we sit here today, is there anything  
[11] in your research that indicates that the use of the  
[12] word redskins is disparaging when referring to the  
[13] football team?  
[14] MR. LINDSAY: Objection.  
[15] A: No.  
[16] Q: Is there anything in your research that  
[17] indicates in 1967 the use of the word redskins was  
[18] disparaging with reference to the football team in  
[19] Washington, D.C.?  
[20] A: No.  
[21] MR. LINDSAY: Objection.  
[22] Q: Between the period from 1967 to 1997,  
[23] is there anything in your research that would reveal  
[24] that the use of the word redskins as a name for the  
[25] football team is disparaging?

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- [1] A: No.  
[2] MR. LINDSAY: Objection.  
[3] Q: Is there anything in your research that  
[4] the use of the word redskins prior to 1967 was  
[5] disparaging with reference to the name of the  
[6] football team?  
[7] MR. LINDSAY: Objection.  
[8] A: No.  
[9] Q: Was there anything in your research  
[10] prior to 1967, that the use of the word redskins  
[11] when applied to American Indian persons was  
[12] disparaging?  
[13] MR. LINDSAY: Objection.  
[14] A: Will you repeat the question, or read  
[15] it back.  
[16] (Record read)  
[17] MR. REINER: I withdraw the question.  
[18] Q: Is there anything in your research  
[19] prior to 1967, which would indicate that the use of  
[20] the word redskins in reference to American Indian  
[21] persons as a denotative term was disparaging?  
[22] A: No.  
[23] MR. LINDSAY: Objection.  
[24] Q: Do you have an opinion as to whether or  
[25]

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- [1] [2] not the use of the word redskins, or skin, as  
[3] applied to a native American Indian person in a  
[4] denotative context was disparaging prior to 1967?  
[5] MR. LINDSAY: Objection.  
[6] A: It was not.  
[7] Q: What would your testimony be for the  
[8] same question with respect to 1997?  
[9] MR. LINDSAY: Same objection. And if  
[10] there is the same line of questioning, I will  
[11] have a standing objection to it.  
[12] A: No.  
[13] Q: I would like to turn your attention to  
[14] page 13 of your report, June 7, 1996.  
[15] MR. LINDSAY: This is Exhibit 21 and  
[16] 23?  
[17] MR. REINER: Yes, it is, sir.  
[18] A: Page?  
[19] Q: 13. This is the end of paragraph 21.  
[20] If you would start on the preceding page, page 12,  
[21] does that paragraph 12 reflect your opinion based  
[22] upon the scientific research which you did?  
[23] MR. LINDSAY: I object to the  
[24] question. I think you said paragraph 12.  
[25] MR. REINER: Excuse me, on page 12.

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- [1] [2] Starting at paragraph 21.  
[3] Q: Does that paragraph set forth your  
[4] opinion as a result of the survey work and other  
[5] research which you did?  
[6] A: Yes, it does.  
[7] MR. LINDSAY: Objection.  
[8] Q: Do you have an opinion concerning  
[9] the -- strike that. In the last sentence of  
[10] paragraph 21 -- strike that.  
[11] With respect to the last sentence of  
[12] paragraph 21, does that reflect your opinion as an  
[13] expert in linguistics, concerning the meaning of the  
[14] word redskins and in reference to the Washington,  
[15] D.C. professional football team?  
[16] MR. LINDSAY: Objection.  
[17] A: Yes, it does.  
[18] Q: Would you read that into the record,  
[19] please, so that we have it clear.  
[20] MR. LINDSAY: Objection.  
[21] A: "Indeed, the connection of this new,  
[22] derived meaning of Redskins with the original  
[23] meaning 'American Indian' has become so attenuated  
[24] that the professional football team is frequently  
[25] referred to simply as the Skins. Indeed, the

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- [1] meaning 'Washington, D.C. professional football  
[2] team' - that's in single quotation marks - "for  
[3] Redskins," underlined, "has become a full-fledged  
[4] second meaning for the noun."  
[5] Q: Would you explain what you mean by a  
[6] full-fledged second meaning for the noun?  
[7] MR. LINDSAY: Objection.  
[8] Q: At set forth in the sentence which you  
[9] just quoted.  
[10] MR. LINDSAY: Sorry, objection.  
[11] A: By full-fledged second meaning, I mean  
[12] that, the meaning Washington, D.C. professional  
[13] football team for the term redskins has become so  
[14] important in American culture that this is worthy at  
[15] least of a dictionary entry of its own.  
[16] If dictionaries had room to give large  
[17] numbers of commercial names, this one certainly  
[18] should be there. It is an extremely important,  
[19] perhaps the most important meaning of redskins in  
[20] American English today.  
[21] MR. REINER: I would like to show you  
[22] an exhibit which was previously marked as  
[23] Nunberg Exhibit No. 19, a two-page document,  
[24] and I think it probably should be marked as

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- [1] an exhibit here so it's clear what we are  
[2] talking about.  
[3] (Butters Exhibit 26, Nunberg Exhibit  
[4] 19, marked for identification as of this  
[5] date.)  
[6] Q: I would like to show you this Exhibit  
[7] No. 19, and ask you whether or not there's - first  
[8] of all, what is this document?  
[9] A: It appears to be a page from a  
[10] dictionary.  
[11] Q: What dictionary, sir?  
[12] A: What dictionary? The page attached to  
[13] it says The American Heritage School Dictionary,  
[14] published by Houghton Mifflin in Boston.  
[15] Q: Are you familiar with that dictionary?  
[16] A: No, I am not.  
[17] Q: Is there a separate, in that page, on  
[18] that first page of that exhibit which you have  
[19] before you, is there a separate entry for the word  
[20] Redskins, in the plural, with a capital R?  
[21] A: Yes.  
[22] Q: What is that entry?  
[23] A: The National Football League team from  
[24] Washington.  
[25]

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- [1] Q: Is that a definition?  
[2] A: Yes.  
[3] Q: Is that a definition?  
[4] A: Yes, it is.  
[5] Q: Is there any label given to that  
[6] definition?  
[7] A: A usage label?  
[8] Q: Yes.  
[9] A: No, none.  
[10] Q: What does that indicate to you with  
[11] respect to the use of the word Redskins with a  
[12] capital R, as defined?  
[13] MR. LINDSAY: Objection.  
[14] A: That this is a denotative formal term  
[15] in standard American English, and that is widely  
[16] known by native speakers of English as a term, as a  
[17] denotative term for the National Football League  
[18] team in Washington, D.C.  
[19] Q: There's an entry above that. Do you  
[20] see that?  
[21] A: Yes.  
[22] Q: Would you read it into the record?  
[23] A: "Redskins" in boldface. Followed by  
[24] the phonetic symbols for its pronunciation in  
[25]

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- [1] Italics N, informal. "A North American Indian."  
[2] Q: First, would you state what your  
[3] opinion is with respect to the use of the word  
[4] "informal" in the definition for the word redskins  
[5] with a small R.  
[6] A: I believe this is absolutely correct.  
[7] Q: What does it mean in the science of  
[8] linguistics?  
[9] A: An informal term is one that is used in  
[10] the primary use of, informal term is in informal  
[11] circumstances and informal situations. Of course  
[12] any informal term can be cited in formal  
[13] circumstances as well, but this is the primary  
[14] meaning for the usage label.  
[15] A parallel example would be the  
[16] difference between child and kid. Child is the more  
[17] formal term, and kid is the less formal term.  
[18] Q: With respect to the usage label in  
[19] formal, does that in any manner connote the word  
[20] as disparaging?  
[21] A: No, it does not.  
[22] Q: With respect to the use of the separate  
[23] entry for redskins as set forth here informal, a  
[24] North American Indian, does that indicate to you  
[25]

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[1] that there's a different word in the English  
[2] language for redskins with reference to the National  
[3] Football League team from Washington, as recognized  
[4] by the editors of this dictionary?  
[5] **MR. LINDSAY:** Objection.  
[6] **A:** That is a little difficult to say,  
[7] whether it should be viewed as two separate words or  
[8] simply one word with two quite different meanings.  
[9] I haven't read the editorial policy in the front  
[10] piece of this particular journal. Dictionary.  
[11] All other things being equal, it's more  
[12] likely that the dictionary authors are viewing this  
[13] as two separate words rather than one word with two  
[14] different meanings, because they do give it two  
[15] separate entries.  
[16] And the entries are also treated quite  
[17] differently, one with a caption and one without.  
[18] And one in the plural, which indicates that it's  
[19] generically used in the plural, and the other is in  
[20] the singular.  
[21] So the balance of evidence is that the  
[22] dictionary entry, the bifurcation of the dictionary  
[23] entry actually indicates an opinion of the editors  
[24] of the dictionary we are dealing here with what for  
[25]

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**Butters**

[1] all practical purposes is two separate words.  
[2] **MR. REINER:** I'm sorry, I am going to  
[3] have to take a break.  
[4] (Recess taken.)  
[5] **BY MR. REINER:**  
[6] **Q:** I believe you testified earlier that  
[7] you prepared your report which has been marked in  
[8] this proceeding, prior to reading any of the Nunberg  
[9] depositions, scripts, or the transcripts of the  
[10] deposition of Miss Courtney; is that correct?  
[11] **A:** Yes.  
[12] **Q:** Is there anything in the reading of the  
[13] deposition of Ms. Courtney and the two depositions  
[14] of Mr. Nunberg, that would cause you to change any  
[15] of the findings or opinions stated in the report  
[16] which you filed, Exhibit 21?  
[17] **A:** No.  
[18] **Q:** With respect to the report which you  
[19] filed in Exhibit 21, I would like to draw your  
[20] attention, please, again to starting on page 12  
[21] under the heading Roman three, "Redskins," and  
[22] "Washington Redskins has developed a new - highly  
[23] positive - meaning."  
[24] Do you see that entry, that side  
[25]

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**Butters**

[1] heading?  
[2] **MR. LINDSAY:** I'm sorry, where are we  
[3] again?  
[4] **A:** Paragraph 21.  
[5] **Q:** Right above paragraph 21 on page 12 of  
[6] the report?  
[7] **A:** Yes.  
[8] **Q:** Do you see paragraph 21?  
[9] **A:** I see paragraph 21.  
[10] **Q:** Does that fairly and accurately set  
[11] forth your opinion with respect to the matters set  
[12] forth therein?  
[13] **MR. LINDSAY:** Objection.  
[14] **A:** Yes, it does.  
[15] **Q:** With respect to the following  
[16] paragraph, 22, does that paragraph fairly and  
[17] accurately set forth your opinion with respect to  
[18] the matters set forth therein?  
[19] **MR. LINDSAY:** Objection.  
[20] **A:** Yes, it does.  
[21] **Q:** With respect to paragraph 23, the  
[22] following paragraph, does that paragraph fairly and  
[23] accurately set forth your opinion with respect to  
[24] the contents thereof?  
[25]

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**Butters**

[1] **MR. LINDSAY:** Objection.  
[2] **A:** Yes, it does.  
[3] **Q:** Does paragraph, the following  
[4] paragraph, 24, fairly and accurately set forth your  
[5] opinion with respect to the contents thereof?  
[6] **MR. LINDSAY:** Objection.  
[7] **A:** Yes, it does.  
[8] **Q:** With respect to the following  
[9] paragraph, 25, does that paragraph fairly and  
[10] accurately set forth your opinion with respect to  
[11] the contents thereof?  
[12] **MR. LINDSAY:** Objection.  
[13] **A:** It certainly does.  
[14] **Q:** Roman letter four, IV, period,  
[15] "Conclusion," does paragraph 26 parallel and  
[16] accurately set forth your opinion with respect to  
[17] the contents thereof?  
[18] **MR. LINDSAY:** Objection.  
[19] **A:** Yes, it does.  
[20] **Q:** Just for purposes of the record, I am  
[21] not going to have you read any of the other  
[22] paragraphs, but read for the record paragraph 26.  
[23] **A:** "The fact" -  
[24] **MR. LINDSAY:** Objection.  
[25]

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**Butters**

[1] A: "The facts reported here lead  
[2] compellingly to the conclusion that the term  
[3] redskins in its traditional meaning, an American  
[4] Indian, has been and is still today an  
[5] overwhelmingly neutral, generally benign alternative  
[6] designator for the indigenous peoples of North  
[7] America. Furthermore, redskins and its derivatives,  
[8] for example, Skins, Washington Redskins, and the  
[9] redskins - that's in parenthesis - "have developed  
[10] in the second half of the 20th Century the  
[11] important, powerfully positive new meaning  
[12] Washington, D.C. professional football team. These  
[13] conclusions follow from an examination of the record  
[14] of the actual usage of redskins by Americans from  
[15] 1699 to the present day (and scholarly comment  
[16] thereon). If occasional objections to the use of  
[17] redskin as a synonym for American Indian have  
[18] developed in some quarters in very recent years, the  
[19] objections have not been shared by the vast majority  
[20] of Americans, who have continued to use the term  
[21] redskins or redskin, one, in the tradition of James  
[22] Fenimore Cooper - that is, only a respectful minor  
[23] variant alternative for 'American Indian,' similar  
[24] in tone to Yankee, Viking or Fighting Irish; and  
[25]

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**Butters**

[1] two, as an important, powerfully positive term in  
[2] American culture referring to the American  
[3] Washington, D.C. football team known as the  
[4] Washington Redskins."  
[5] MR. LINDSAY: Objection. Move to  
[6] strike.  
[7] Q: Is that your opinion?  
[8] A: Yes.  
[9] Q: Is that opinion based upon  
[10] scientifically developed data which you assembled in  
[11] accordance with the standards and procedures usually  
[12] used in linguistics?  
[13] MR. LINDSAY: Objection.  
[14] A: Yes.  
[15] Q: Previously we have marked some comments  
[16] on the Nunberg testimony; is that correct, and that  
[17] was marked as Exhibit 24; is that correct?  
[18] A: Let me see. Yes, number 24.  
[19] Q: Was that prepared as a result of your  
[20] reviewing the testimony set forth in the depositions  
[21] of Mr. Nunberg?  
[22] A: Yes.  
[23] Q: Since that time have you had the  
[24] opportunity to read the testimony of Ms. Courtney?  
[25]

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**Butters**

[1] A: Yes.  
[2] Q: As a result of reading the testimony of  
[3] Ms. Courtney, is there anything that you would like  
[4] to add or change in the document that has been  
[5] marked as Exhibit No. 24?  
[6] MR. LINDSAY: Objection.  
[7] A: Not at this time.  
[8] Q: Did you have an occasion to look at any  
[9] type of specialized writings concerning the language  
[10] of native American culture, since your reading of  
[11] the transcript of Dr. Nunberg?  
[12] A: Yes. I discovered a dictionary called  
[13] Word Dance, a dictionary of the native American  
[14] culture, and I did look at that dictionary.  
[15] Q: Who wrote that literary work?  
[16] A: Carl W-a-l-d-m-a-n.  
[17] Q: Who is the publisher?  
[18] A: Published by Facts on File.  
[19] Q: What reputation does that publisher  
[20] have?  
[21] MR. LINDSAY: Objection.  
[22] A: Facts on File is a reputable publisher  
[23] of scholarly works; research works in particular.  
[24] Q: Would this work have any definitions as  
[25]

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**Butters**

[1] applied to native American Indian persons?  
[2] MR. LINDSAY: Objection.  
[3] A: A wide range of such terms, yes.  
[4] Q: Did you find any that had any labels  
[5] that indicated there were such terms that were  
[6] derogatory or disparaging?  
[7] MR. LINDSAY: Objection.  
[8] A: Yes, I did.  
[9] Q: Can you tell us what terms were  
[10] indicated as being disparaging or derogatory?  
[11] A: The word -  
[12] MR. LINDSAY: Objection.  
[13] A: The word squaw is labeled as  
[14] derogatory. The word half-breed is labeled as  
[15] derogatory. The word Uncle Tomahawk is labeled as  
[16] derogatory, and the word apple is labeled as  
[17] derogatory.  
[18] Q: Is the word Indian included in that  
[19] particular dictionary?  
[20] A: The word Indian is included.  
[21] Q: Does that have any label for the use of  
[22] the word Indian?  
[23] A: There's no label for the word Indian,  
[24] but as a subpart of the word Indian the word injun  
[25]

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**Butters**

[1] **Butters**  
[2] or the spelling or pronunciation of Indian as injun,  
[3] is given the label derogatory.  
[4] **MR. LINDSAY:** Objection.  
[5] **Q:** Is there any reference at all to the  
[6] use of the word redskins in this particular work?  
[7] **MR. LINDSAY:** Objection.  
[8] **A:** There's an entry for redskins there,  
[9] this particular work.  
[10] **Q:** Is there any indication that there's a  
[11] label for redskins in this particular work?  
[12] **MR. LINDSAY:** Objection.  
[13] **A:** It is cross-referenced as red man. It  
[14] is also compared to the French technical term,  
[15] p-e-a-u-r-o-u-g-e, but there's no usage label  
[16] whatsoever for redskins in this dictionary.  
[17] **Q:** In the absence of the usage label, have  
[18] you come to a conclusion as to the meaning of what  
[19] that word, as far as the editors and the writer of  
[20] the dictionary, is?  
[21] **MR. LINDSAY:** Objection.  
[22] **A:** As of the date of publication of this  
[23] work, 1994, the editor or the author, the compiler  
[24] of the dictionary did not find redskins a derogatory  
[25] word, as he did numerous other ethnicisms.

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**Butters**

[1] **Butters**  
[2] **Q:** Did there come a time following your -  
[3] **MR. LINDSAY:** Excuse me, counsel.  
[4] Before you move on, it appears to me, first  
[5] of all, I should note for clarity of the  
[6] record, that the document to which the  
[7] witness has been testifying has not  
[8] previously been identified, and no copy of  
[9] any portion of that document, dictionary has  
[10] been presented to me. But it does appear  
[11] that the witness has been reading from notes  
[12] that were before him during his testimony. I  
[13] would like to see those notes.  
[14] **MR. REINER:** Let's have them marked  
[15] for identification. Well, I suppose the  
[16] document from which you testified, if that's  
[17] what you want, and some notes, have the  
[18] document marked for identification, please,  
[19] and give your notes to Mr. Lindsay, and he  
[20] will decide whether he wants them marked.  
[21] (Butters Exhibit 27, document, marked  
[22] for identification as of this date.)  
[23] **Q:** Has that work that you have just been  
[24] referring to, titled Word Dance, The Language of  
[25] Native American Culture, been marked for

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**Butters**

[1] **Butters**  
[2] identification now?  
[3] **A:** Yes, it has.  
[4] **Q:** What is it?  
[5] **A:** Number 27.  
[6] **MR. LINDSAY:** Objection.  
[7] **Q:** Would you please given your notes to  
[8] Mr. Lindsay.  
[9] **A:** I have done.  
[10] **MR. LINDSAY:** The witness has provided  
[11] me his notation, and I see no need to mark  
[12] the notes themselves. I do object to the  
[13] testimony and to the exhibit.  
[14] **Q:** Since reading the deposition of Mr.  
[15] Nunberg and Ms. Courtney, have you had occasion to  
[16] see any film clips that were used in there, in the  
[17] deposition?  
[18] **A:** Yes, I have.  
[19] **Q:** When was that?  
[20] **A:** Yesterday, late afternoon.  
[21] **Q:** With respect to those film clips, they  
[22] have been previously marked as an exhibit.  
[23] Exhibit -  
[24] **A:** I'm terribly sorry, I'm going to have  
[25] to leave the room for a second.

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**Butters**

[1] **Butters**  
[2] **MR. REINER:** Certainly.  
[3] (Recess taken.)  
[4] **MR. REINER:** The film clips which you  
[5] made reference to which you saw yesterday  
[6] afternoon, and prepared by Ms. Courtney, were  
[7] marked in her deposition as Exhibit No. 3.  
[8] Can we deem to have them marked as Exhibit 28  
[9] in this.  
[10] **MR. LINDSAY:** That's fine, if you want  
[11] them remarked.  
[12] **MR. REINER:** Yes, I want them  
[13] remarked, yes.  
[14] (Butters Exhibit 28, film clips,  
[15] deemed marked for identification as of  
[16] this date.)  
[17] **Q:** Do you recall seeing that Exhibit No.  
[18] 28 yesterday afternoon in this office, in this room?  
[19] **A:** Yes, I do.  
[20] **Q:** It's approximately a little more than  
[21] eleven minutes; is that correct?  
[22] **A:** That seems to accord with my memory.  
[23] **Q:** Could you just generally describe what  
[24] you saw yesterday?  
[25] **A:** I saw several clips from movie,

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**Butters**

- [1] beginning with an Eddie Cantor movie from 1930, and  
[2] ending - I'm not sure where. Peter Pan, somewhere  
[3] in the middle.  
[4] Q: With respect to those clips that you  
[5] saw, was the use of the word redskins in a  
[6] denotative sense disparaging in any of those clips?  
[7] MR. LINDSAY: Objection.  
[8] A: No.  
[9] Q: Could any word have been substituted  
[10] for the word redskins in a denotative sense in those  
[11] clips?  
[12] MR. LINDSAY: Objection.  
[13] A: To the best of my memory, yes.  
[14] Q: What would that have been?  
[15] MR. LINDSAY: Objection. The word  
[16] that can be substituted for the word  
[17] redskins.  
[18] A: The word Indian.  
[19] Q: Did that in any manner change the  
[20] content in which the word was used?  
[21] MR. LINDSAY: Objection.  
[22] Q: Do you understand the question?  
[23] A: Yes, I am trying to remember. I am  
[24] just pondering it. To the best of my memory, no.  
[25]

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**Butters**

- [1] Q: Did any of those film clips make any  
[2] reference to the use of the word redskins in a  
[3] football context?  
[4] A: None.  
[5] Q: From your reading of the methodology  
[6] used by Susan Courtney, can you express any view  
[7] with respect to the procedure followed in selecting  
[8] the film clips that were included in Exhibit No. 28?  
[9] MR. LINDSAY: Objection.  
[10] A: I have one criticism, which is as  
[11] follows: The initial decision was to search for the  
[12] term redskins or redskin in American cinema by  
[13] reviewing largely western films. These are films in  
[14] which one would expect to find a high degree of  
[15] confrontation between whites and Indians.  
[16] In other words, one would expect in  
[17] those contexts to find the term redskins used in  
[18] connotations of violence, anger, et cetera. Thus,  
[19] one - these would be the environments in which one  
[20] would be most likely to find the word redskins  
[21] uttered in anger or within the framework of  
[22] violence, retribution, and indeed racism and racial  
[23] bigotry.  
[24] Thus, the initial sampling of materials  
[25]

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**Butters**

- [1] here is skewed in the direction of finding the worst  
[2] possible examples of the term that is at question,  
[3] so that it's a biased sample from that perspective.  
[4] Q: Any comments with respect to the manner  
[5] in which the films were selected for inclusion  
[6] within the sample actually used?  
[7] MR. LINDSAY: Objection.  
[8] A: Based upon my recollection of her  
[9] testimony, there were instances of redskins - in at  
[10] least three instances of redskins which were found  
[11] by her in her search which she and Dr. Nunberg  
[12] decided to exclude from the evidence that presented  
[13] on this tape.  
[14] Q: Was any attempt made - strike that.  
[15] You testified before that you had been  
[16] an editor of a scholarly journal called American  
[17] Speech?  
[18] A: I have been editor, was editor of  
[19] American Speech from 1981 through 1995.  
[20] Q: Was American Speech -  
[21] A: Journal of the American Dialect  
[22] Society, published quarterly.  
[23] Q: Is that an accepted publication used in  
[24] the discipline of linguistics?  
[25]

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**Butters**

- [1] A: Yes, within the framework of American  
[2] English and American linguistics and American  
[3] sociolinguistics and American dialectology and  
[4] American lexicography.  
[5] Q: What was your role as an editor of  
[6] American Speech from 1981 to 1995?  
[7] A: My role was to accept or reject  
[8] manuscripts for publication. I had the final  
[9] decision based upon recommendations of my editorial  
[10] advisory committee.  
[11] Q: Would you have any occasion ever to  
[12] review presentations based upon surveys?  
[13] A: Yes.  
[14] Q: What did you do with respect to such  
[15] review as an editor?  
[16] A: A number of our articles, submissions,  
[17] and a number of our published articles were based  
[18] upon surveys.  
[19] Q: What was your role?  
[20] A: My role was to decide whether to  
[21] publish or reject or return for revision such  
[22] submissions. All such submissions, including  
[23] articles based upon surveys.  
[24] MR. LINDSAY: Can I make sure for  
[25]



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**Butters**

- [1]  
[2] clarity, when the witness has referred to  
[3] "our," are you referring to the journal as  
[4] opposed to your own personal?  
[5] **THE WITNESS:** Yes, I am referring to  
[6] the journal in response to these questions,  
[7] yes.  
[8] **Q:** With respect to what you did in  
[9] reviewing these materials, is it correct to say that  
[10] as editor you had the final decision as to what  
[11] would be acceptable for inclusion in the journal  
[12] itself?  
[13] **A:** Yes.  
[14] **Q:** Did you have the occasion to review the  
[15] work done by Ivan Ross with respect to any surveying  
[16] materials and reports which he prepared, and the  
[17] exhibit thereto?  
[18] **A:** Yes, I did.  
[19] **Q:** In the context of your work as the  
[20] editor of American Speech, do you have any views as  
[21] to whether or not this - do you have any views with  
[22] respect to this survey report and materials done by  
[23] Dr. Ross?  
[24] **MR. LINDSAY:** Objection.  
[25] **A:** Yes, I do.

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**Butters**

- [1]  
[2] **Q:** Do you have such an opinion?  
[3] **A:** Yes, I do.  
[4] **Q:** What is your opinion?  
[5] **MR. LINDSAY:** Objection.  
[6] **A:** My opinion is that the study is flawed  
[7] in several serious ways.  
[8] **Q:** As a result of that opinion, would you  
[9] have approved it for publication in American Speech?  
[10] **MR. LINDSAY:** Objection.  
[11] **A:** No, I would not.  
[12] **Q:** In what manner do you believe it is  
[13] flawed?  
[14] **MR. LINDSAY:** Objection.  
[15] **A:** There are several flaws. I don't have  
[16] a copy of the document in front of me.  
[17] **Q:** We will place a copy of the document in  
[18] front of you.  
[19] **A:** Thank you.  
[20] **Q:** Do you have a copy of the report of  
[21] Ivan Ross before you, which you reviewed?  
[22] **A:** It's before me.  
[23] **Q:** With respect to the materials which are  
[24] set forth therein which you reviewed, can you tell  
[25] me what flaws you ascertained for purposes of

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**Butters**

- [1]  
[2] expressing your opinion?  
[3] **MR. LINDSAY:** Objection.  
[4] **A:** The first flaw has to do with the  
[5] specific methodology of the questionnaire as opposed  
[6] to the results that he announces are his goals.  
[7] That is, the goal of the report is  
[8] to - or the survey, the goal of his research is to  
[9] find out the status with respect to whether or not  
[10] the term redskins is scandalous within contemporary  
[11] American culture, but he didn't ask the question of  
[12] his respondents.  
[13] The question he asks of his respondents  
[14] has nothing to do with the term scandalous. He  
[15] asks, rather, some questions about whether or not  
[16] the term is offensive. The term offensive and  
[17] scandalous mean different things, and they mean  
[18] different things to the American public, and this is  
[19] well-documented in the dictionaries.  
[20] And if you want to find out whether  
[21] something is scandalous or not ask people  
[22] scandalous, and you don't ask whether or not it is  
[23] something else.  
[24] This is certainly an overriding flaw of  
[25] the research, and would in itself be grounds for

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**Butters**

- [1]  
[2] suggesting that if the article would be published at  
[3] all, it would be significantly revised so that the  
[4] research reflects the questions, the conclusions  
[5] reflect the questions actually asked.  
[6] **Q:** Were any questions asked whether or not  
[7] the term redskins was disparaging?  
[8] **A:** No.  
[9] **Q:** Do you have a view with respect to  
[10] that?  
[11] **A:** Again, if one wants to find out whether  
[12] or not a term is disparaging, one needs to ask that  
[13] question, not ask some other question.  
[14] Disparaging and offensive are two  
[15] different words and mean two different things, and  
[16] they have two quite different semantic ranges with  
[17] respect to the English language.  
[18] **Q:** Do you have any opinion with respect to  
[19] the expert disclosure and the underlying data?  
[20] **A:** Yes. There's a second serious flaw in  
[21] the research, and that has to do with the way the  
[22] questions are posed. The questions are posed as a  
[23] forced choice response; that is, the subjects are in  
[24] essence asked a yes, no, question, either this term  
[25] is objectionable or it is not objectionable.

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**Butters**

[1] There's a third offering for no  
[2] opinion, but the question, but the answer to a yes,  
[3] no question about a - an issue, research issue,  
[4] which is essentially spread out over time is  
[5] thoroughly suspect. It does not allow for any  
[6] degree of subtlety in the responses.  
[7] Do I find it objectionable? That  
[8] depends upon the context in which I find it  
[9] objectionable. Does somebody else find it  
[10] objectionable, that depends on the context that it  
[11] is presented. Do I find it trivially objectionable  
[12] or excessively objectionable.  
[13] And a really meaningful survey of this  
[14] sort would be one in which there were at least  
[15] several degrees of responses offered to the  
[16] subjects, and in which there were some attempts at  
[17] least to deal with the subtleties of the matter,  
[18] both in terms of intensity of response and in terms  
[19] of range of response.  
[20] MR. LINDSAY: Objection. Move to  
[21] strike.  
[22] Q: In view of the opinions which you have  
[23] just expressed, would you have approved for  
[24] publication in American Speech the disclosure and  
[25]

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**Butters**

[1] statement and the underlying data prepared by Ivan  
[2] Ross?  
[3] MR. LINDSAY: Objection. Incomplete  
[4] hypothetical since it assumes that the report  
[5] in its present form is what would be  
[6] submitted for presentation in the journal,  
[7] and there certainly has been no suggestion  
[8] that one would submit a particular format of  
[9] the report for publication in an academic  
[10] journal.  
[11] Q: You may answer.  
[12] A: The report in its present form would  
[13] not be publishable simply because it's in its  
[14] present form, nor would any conceivable research  
[15] report based upon such a survey be publishable  
[16] without going back to the drawing board and starting  
[17] over.  
[18] I have other objections as well.  
[19] MR. LINDSAY: Objection. I move to  
[20] strike.  
[21] Q: What are your other objections?  
[22] A: The -  
[23] MR. LINDSAY: Objection.  
[24] A: The chief other objection centers upon  
[25]

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**Butters**

[1] the comparability of this study to the full range of  
[2] derogatory terms with respect to American English.  
[3] Mr. Ross maintains that the words that  
[4] he has asked give us an insight into something  
[5] relatively fundamental about the nature of words as  
[6] used in the English language, and that is how  
[7] derogatory are these terms.  
[8] But the semantic range of the words  
[9] that are asked are all within the framework of  
[10] native American culture. There's no comparison of  
[11] these words. We have no comparison figure, for  
[12] example, to nigger, and no comparison term to kike  
[13] and no comparison figure to a pollock. No  
[14] comparison figure to wop. Where on the semantic  
[15] range of objectionable these terms lie is not made  
[16] clear here. This is perhaps somewhat less  
[17] important.  
[18] It's a cogent objection, but less  
[19] important objection than the other two. But in and  
[20] of itself, it would cast serious doubts upon the  
[21] report, and it particularly casts doubt upon the  
[22] report as it is phrased, because the percentages  
[23] that he gives in the tables are at the back of the  
[24] report, and which are intrinsic to his conclusions  
[25]

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**Butters**

[1] are percentages that are relatively meaningless in  
[2] isolation from comparable figures for established  
[3] terms, the status as, derogatory status of which as  
[4] derogatory terms is beyond question.  
[5] The statistic that he gives, for  
[6] example - the most meaningful statistic in the  
[7] study, and it's not very meaningful at all, given my  
[8] other objections, is that only despite all of these  
[9] other ways in which the - strike that.  
[10] The most meaningful figure that he  
[11] gives is that 36 percent of native members  
[12] personally find it objectionable. If you want to  
[13] find out whether something is objectionable or not,  
[14] that at least is a sort of starting place. That is,  
[15] find out how many people actually find the term  
[16] objectionable themselves, as opposed to how many  
[17] might conjecture on some other basis, that somebody  
[18] else somewhere on planet earth might find the term  
[19] objectionable in some sense as well.  
[20] The 36 percent figure is inflated, in  
[21] fact, because of the choice nature of the survey.  
[22] But the 36 percent figure is really the only one  
[23] that has any use at all. However, he actually  
[24] attempts to, by statistical - by making some  
[25]

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[1] *Butters*  
[2] questionable statistical assumption, to inflate this  
[3] 36 percent figure to something in the high 80s or  
[4] 90s, or even 100 percent, so that the statistical  
[5] basis upon which he draws his conclusions is really  
[6] very questionable.  
[7] MR. LINDSAY: Objection, and move to  
[8] strike.  
[9] Q: With respect to your position as editor  
[10] of the American Speech, did you have occasion to  
[11] reject manuscripts that had been submitted to you?  
[12] A: Yes. Ours is a referee journal, and  
[13] referee journals nearly always have at least some  
[14] rejections.  
[15] Q: Yesterday afternoon you were shown a  
[16] film entitled, excerpts from a film entitled Courage  
[17] Under Fire.  
[18] A: Yes, I was.  
[19] Q: Did the excerpt that you saw indicate  
[20] any of the actors wearing a cap of some type?  
[21] MR. LINDSAY: Excuse me. Objection.  
[22] I should note that this line of questioning  
[23] apparently is going to concern the videotape  
[24] which was first produced to me in the middle  
[25] of last week. That videotape is a portion

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[1] *Butters*  
[2] only of the movie involved. The videotape  
[3] that I received was essentially inaudible.  
[4] I faxed a letter on Monday, I believe,  
[5] of this week, to White & Case, to ask for a  
[6] more audible copy. I understand informally,  
[7] from conversations off the record, that White  
[8] & Case has represented that it doesn't have a  
[9] more audible copy, but I nonetheless do  
[10] object to the production of this film clip,  
[11] and I object to any testimony with respect to  
[12] the film clip.  
[13] MR. REINER: Just so that the record  
[14] is complete, may we have the film clip played  
[15] so we can ascertain whether or not it's  
[16] audible to the person sitting in this room,  
[17] in particular, the witness.  
[18] (Butters Exhibit 29, film clip,  
[19] marked for identification as of this date.)  
[20] Q: First, was that tape audible to you?  
[21] A: Yes, it was.  
[22] MR. LINDSAY: The record should  
[23] reflect that the television screen shows that  
[24] the volume was set at 50, I believe was the  
[25] number, and it was set at that number after

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[1] *Butters*  
[2] Mr. Reiner instructed that it be set at the  
[3] highest volume.  
[4] Was it the highest volume?  
[5] MS. GOLDBERG: The highest volume.  
[6] Q: With respect to the film, was there  
[7] someone wearing a cap that you observed?  
[8] A: Yes, there was.  
[9] MR. LINDSAY: Excuse me, before you  
[10] continue, counsel, could we agree I have a  
[11] standing objection to this line?  
[12] MR. REINER: Surely. Lawyers like to  
[13] object. I have no problem with an  
[14] outstanding objection.  
[15] Q: Did you notice one of the actors  
[16] wearing a cap?  
[17] A: Yes, I did.  
[18] Q: Do you know who the actor was?  
[19] A: It's an actor I know as Denzel  
[20] Washington.  
[21] Q: Was that actor portrayed in any manner  
[22] as a protagonist in the film clip that you saw?  
[23] A: In the film clip there were only two  
[24] people present in the film, and they both seemed to  
[25] be quite important.

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[1] *Butters*  
[2] Q: With respect to the cap that the person  
[3] wore, was there any writing on the cap?  
[4] A: Yes, there was.  
[5] Q: What was the writing?  
[6] A: The writing said Redskins.  
[7] Q: Was it in some type of script?  
[8] A: Yes, it was in script.  
[9] Q: What were the colors of the cap?  
[10] A: Reddish and gold.  
[11] Q: Do you recognize them as the colors of  
[12] the Washington Redskins football team?  
[13] A: No, I do not. I'm not a football fan.  
[14] Q: Was the scene, where was that scene  
[15] taken?  
[16] A: In Washington, D.C.  
[17] Q: Do you recognize capitol of the United  
[18] States there?  
[19] A: Yes, I could.  
[20] Q: With respect to the cap that was worn,  
[21] was there any reference connotatively, any entity or  
[22] organization?  
[23] MR. LINDSAY: Objection. I'm sorry,  
[24] was the question was there any reference  
[25] connotatively to any organization?

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[1] *Butters*  
[2] MR. REINER: Yes.  
[3] MR. LINDSAY: I object to the  
[4] question.  
[5] A: By means of the hat?  
[6] Q: Yes, right. Withdraw the question.  
[7] Do you recognize that as referring to  
[8] any particular organization or entity or person?  
[9] A: The most reasonable inference would be  
[10] that it's a reference to the Washington, D.C.  
[11] professional football team.  
[12] Q: Was the use of the word "Redskins" on  
[13] that hat in that context, in that particular film  
[14] clip, in any manner disparaging?  
[15] A: Certainly not.  
[16] MR. LINDSAY: Excuse me. Objection.  
[17] Q: Was it in any manner scandalous?  
[18] MR. LINDSAY: Objection.  
[19] A: Certainly not.  
[20] Q: Was it in any manner derogatory?  
[21] MR. LINDSAY: Objection.  
[22] A: Definitely not.  
[23] Q: With respect your review of Mr.  
[24] Nunberg's testimony, would you please make reference  
[25] to Exhibit No. 24 for a point of reference.

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[1] *Butters*  
[2] A: I have it.  
[3] Q: Does this document set forth your views  
[4] on the testimony of Mr. Nunberg in December of 1996  
[5] and February of 1997?  
[6] MR. LINDSAY: Objection.  
[7] A: This was written specifically in  
[8] response to the February deposition.  
[9] Q: Having reviewed the film clips that  
[10] were identified to you as Courtney Exhibit 3,  
[11] Exhibit 28 here, is there anything in this  
[12] commentary, some comments on Nunberg's testimony  
[13] that you would wish to change?  
[14] MR. LINDSAY: Objection.  
[15] A: Certainly not.  
[16] Q: Does this document fairly reflect your  
[17] views on Professor Nunberg's testimony?  
[18] MR. LINDSAY: Objection.  
[19] A: Yes.  
[20] Q: With respect to the use of the word  
[21] nigger in the testimony of Dr. Nunberg, could you  
[22] tell us whether or not nigger has any denotative  
[23] sense in the English language?  
[24] MR. LINDSAY: Objection.  
[25] A: Denotative sense?

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[1] *Butters*  
[2] Q: Yes, denotative.  
[3] A: Yes, it is denotative in the sense that  
[4] it makes reference to people who are members of the  
[5] race known as, variously as African-American, black.  
[6] Q: In the English language does it have  
[7] any connotative sense?  
[8] A: It certainly does.  
[9] Q: What is that?  
[10] A: It's disparaging and derogatory.  
[11] Q: Is there any label that is used in a  
[12] word like that, such as taboo for purposes of the  
[13] English language?  
[14] MR. LINDSAY: Objection, leading.  
[15] MR. REINER: I withdraw the question.  
[16] Q: With respect to the use of the word  
[17] nigger, is that in any way comparable by definition  
[18] to the use of the word redskins?  
[19] MR. LINDSAY: Objection. As applied  
[20] to individuals? Objection.  
[21] THE WITNESS: Would you read the  
[22] question back?  
[23] (Record read.)  
[24] A: By definition, nigger refers to a  
[25] racial group denotatively, and redskins refers

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[1] *Butters*  
[2] denotatively to a racial group, so I guess the  
[3] answer to your question is yes.  
[4] Q: With respect to any connotative use of  
[5] the word nigger as compared to redskins in the  
[6] English language, is there any difference?  
[7] MR. LINDSAY: Objection.  
[8] A: Yes, there is.  
[9] Q: What is that?  
[10] A: Nigger is a highly derogatory,  
[11] disparaging term. Redskins is not.  
[12] Q: Are you aware of any usage of the word  
[13] nigger in the American English language that is  
[14] anything other than disparaging of persons of  
[15] African ancestry?  
[16] MR. LINDSAY: Objection.  
[17] A: In earlier centuries, yes.  
[18] Q: In a modern American English since  
[19] 1900?  
[20] MR. LINDSAY: Objection.  
[21] A: In standard American English in the  
[22] 20th Century, the term nigger is a disparaging,  
[23] derogatory term.  
[24] Q: Would that be true of a word such as  
[25] kike?

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**Butters**

- [1] A: I haven't researched the history of the  
[2] term kike, so I don't really know when this came  
[3] into usage. The term nigger has been around for  
[4] hundreds of years, but kike is, with respect to its  
[5] derogatory nature, a well-established term of  
[6] derogation.  
[7] Q: With respect to the word shyster, you  
[8] understand that word has a meaning?  
[9] A: Yes, it does.  
[10] Q: What is your understanding of the  
[11] meaning of the word?  
[12] MR. LINDSAY: Objection.  
[13] A: Shyster means - I'm sorry, the phone  
[14] call just - for some reason I have trouble talking  
[15] when you are on the phone.  
[16] Would you restate the question, please?  
[17] Q: Do you have any views with respect to  
[18] the word shyster?  
[19] A: Perhaps.  
[20] Q: We will start all over again.  
[21] Have you any opinion as to whether the  
[22] use of the word shyster in English would have any  
[23] neutral connotation?  
[24] A: The term shyster by definition is a

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**Butters**

- [1] derogatory term. It has a, it means an unscrupulous  
[2] lawyer or a dishonest lawyer or politician.  
[3] MR. LINDSAY: Objection.  
[4] Q: In your opinion, is there any manner in  
[5] which a linguist can use the word nigger and shyster  
[6] as comparable to the use of the word redskins in the  
[7] English language?  
[8] MR. LINDSAY: Objection.  
[9] A: Is there any way they can be used as  
[10] comparable?  
[11] Q: No, that's not the question.  
[12] A: I don't understand the question.  
[13] Q: Let me start again.  
[14] Within the discipline of linguistics,  
[15] may words be compared to each other in a manner in  
[16] which a derogatory word such as shyster and nigger  
[17] can be used as comparable to the word redskins?  
[18] MR. LINDSAY: Objection. Do you  
[19] understand the question?  
[20] A: I'm sorry, I am still having trouble  
[21] understanding the question.  
[22] Q: Let me try again. In the discipline of  
[23] linguistics, can the word redskins be deemed a taboo  
[24] word?  
[25]

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**Butters**

- [1] MR. LINDSAY: Objection. Leading.  
[2] Q: Such as nigger?  
[3] MR. LINDSAY: Objection. Leading.  
[4] A: No.  
[5] Q: Can the word redskins be used as a  
[6] taboo word - strike that.  
[7] Does the word redskins constitute a  
[8] taboo word, such as shyster would in the English  
[9] language?  
[10] MR. LINDSAY: Objection.  
[11] A: The word redskins is not a taboo word,  
[12] the word nigger is a taboo word, and the word  
[13] shyster is not a derogatory word.  
[14] Q: Is it a disparaging word?  
[15] A: Yes.  
[16] Q: Is the word redskins a disparaging  
[17] word?  
[18] A: No.  
[19] Q: A derogatory word?  
[20] A: No, it is not.  
[21] MR. LINDSAY: Objection.  
[22] Q: I would like to draw your attention to  
[23] page 481 of the transcript of the deposition of  
[24] Jeffrey Nunberg on February 19, 1997.  
[25]

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**Butters**

- [1] I would like to draw your attention to  
[2] line 3, the question, the response given starting  
[3] with line 4 to line 13.  
[4] Have you had read that?  
[5] A: Yes, I have.  
[6] Q: Do you have any opinion with respect to  
[7] that testimony of Dr. Nunberg?  
[8] A: Socio-linguistically, this is  
[9] incorrect.  
[10] Q: In what manner?  
[11] A: The assertion of Dr. Nunberg here is  
[12] that sports teams choose their name in order to  
[13] strike fear into the hearts of their opponents, in  
[14] order to convey an impression it will strike fear  
[15] into the heart of their opponents.  
[16] Socio-linguistics say this simply is  
[17] not the case, people don't. The opponents of the  
[18] Washington Redskins are not afraid of the Washington  
[19] Redskins because of the name of the Washington  
[20] Redskins. The most, if you chose a term that was  
[21] far more ferocious than redskins, or a term that was  
[22] pitiless and inhuman and savage and ferocious, which  
[23] redskins is not. Even so, the choice of such terms  
[24] is scarce to strike fear in the hearts of the  
[25]

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[1] **Butters**  
[2] opponents.  
[3] The choice of the terms is basically a  
[4] positive, rather than a negative decision. One  
[5] chooses a name in order to emulate a term which  
[6] conveys the positive feelings that a sports team  
[7] wants to have about itself, and the positive  
[8] connotations that the sports team wants to convey to  
[9] its fans.  
[10] **MR. LINDSAY:** Objection. I move to  
[11] strike.  
[12] **Q:** In your opinion, are the conclusions  
[13] drawn by Mr. Nunberg from the data in which he  
[14] relies valid assertions within the discipline of  
[15] linguistics?  
[16] **MR. LINDSAY:** Objection.  
[17] **A:** In his testimony, in his report?  
[18] **Q:** Yes, sir.  
[19] **A:** With respect to the term redskins?  
[20] **Q:** Yes.  
[21] **A:** No, they are not.  
[22] **MR. REINER:** Just give me a minute.  
[23] (Recess taken.)  
[24] **MR. REINER:** Just for the record, I  
[25] have completed my direct examination.

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[1] **Butters**  
[2] **MR. LINDSAY:** I will not repeat the  
[3] comments that I have made previously on the  
[4] record here, but without waiving the various  
[5] objections that I have made, I will proceed  
[6] with my cross-examination.  
[7] **EXAMINATION BY**  
[8] **MR. LINDSAY:**  
[9] **Q:** Sir, my name is Michael Lindsay and I  
[10] represent the petitioners in this matter. Do you  
[11] understand that?  
[12] **A:** Yes, sir.  
[13] **Q:** If at any time during our deposition  
[14] today you either don't hear or understand one of my  
[15] questions, would you please ask me to repeat it or  
[16] clarify it?  
[17] **A:** I will do.  
[18] **Q:** During my examination I may refer to,  
[19] say Washington football club or the Washington  
[20] football team, may we have an understanding that  
[21] refers to the NFL football team that plays in the  
[22] Washington, D.C. area?  
[23] **A:** Agreed.  
[24] **Q:** I'm also referring periodically to the  
[25] attorneys for the Washington football club, and by

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[1] **Butters**  
[2] that I mean the law firm of White & Case, or any of  
[3] the individual attorneys at that firm, such as Mr.  
[4] Reiner or Ms. Goldberg.  
[5] **A:** I understand, yes.  
[6] **Q:** You have previously testified in this  
[7] matter; is that correct?  
[8] **A:** Yes, sir.  
[9] **Q:** You understand that when you testified  
[10] earlier you were under oath?  
[11] **A:** Yes.  
[12] **Q:** Just as you are today?  
[13] **A:** Yes.  
[14] **Q:** Now, as I understand your testimony,  
[15] sir, you have testified that you have reviewed the  
[16] February 1997 transcript of the Jeffrey Nunberg  
[17] deposition; is that correct?  
[18] **A:** Yes.  
[19] **Q:** When did you review that?  
[20] **A:** In late March and/or early April.  
[21] **Q:** You have also reviewed the Susan  
[22] Courtney deposition?  
[23] **A:** Yes.  
[24] **Q:** You reviewed that for the first time  
[25] last night; is that correct?

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[1] **Butters**  
[2] **A:** That's correct.  
[3] **MR. REINER:** Just to state for the  
[4] record, I should note that I objected to the  
[5] Courtney deposition. Although I used it  
[6] here, I object to that deposition.  
[7] **MR. LINDSAY:** I understand, but this  
[8] witness has testified with respect to it, and  
[9] I'm entitled to establish my foundation.  
[10] **MR. REINER:** I understand, but I  
[11] wanted to make the record clear.  
[12] **Q:** Did you review any of the exhibits to  
[13] the Courtney deposition?  
[14] Let me exclude from that question for  
[15] the moment the film clip which I understand you  
[16] reviewed yesterday; is that correct?  
[17] **A:** Yes.  
[18] **Q:** Your viewing of the film clip, Courtney  
[19] Exhibit 3, yesterday was the first time that you  
[20] viewed that clip; is that correct?  
[21] **A:** Yes.  
[22] **Q:** Other than that film clip, did you  
[23] review any of the exhibits to the Courtney  
[24] deposition?  
[25] **A:** Yes, I did.

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[1] **Butters**

[2] Q: Which ones?

[3] A: I just have to refer to the document.

[4] This is the document that I looked at last night,

[5] and so everything that's in here I have reviewed.

[6] Would you like me to read the titles?

[7] Q: You have before you a copy of the

[8] deposition of Susan Courtney taken February 18,

[9] 1997, and you are referring to the exhibits that are

[10] attached to that; is that correct?

[11] A: That's correct.

[12] Q: Those are Courtney Exhibits, 1, 2, 4

[13] and 5; is that correct?

[14] A: Yes.

[15] Q: Last night was the first time that you

[16] reviewed them?

[17] A: Right.

[18] MR. REINER: Just for clarity on the

[19] record, No. 3 was the tape itself.

[20] MR. LINDSAY: Yes.

[21] Q: Can you answer the question?

[22] A: What was the question?

[23] Q: Last night was the first time that you

[24] reviewed any of the Courtney exhibits; is that

[25] correct?

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[1] **Butters**

[2] A: Except for the film.

[3] Q: Which you viewed for the first time

[4] yesterday afternoon?

[5] A: Yesterday afternoon, yes.

[6] Q: How much time did you spend reviewing

[7] the Courtney deposition and exhibits?

[8] A: Approximately one hour.

[9] Q: The particular copy of the Courtney

[10] exhibit that you have - let me, the transcript

[11] portion is 154 pages; is that correct?

[12] A: Yes.

[13] Q: Courtney Exhibit 2 is, Courtney Exhibit

[14] 1 is two pages long, correct?

[15] A: Yes.

[16] Q: Courtney Exhibit 2 is one page long,

[17] correct?

[18] A: Yes.

[19] Q: Courtney Exhibit 4 is five pages long;

[20] is that correct?

[21] A: Yes.

[22] Q: Courtney Exhibit 5 is 21 pages long; is

[23] that correct?

[24] A: Yes.

[25] Q: Do you believe that you were able to

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[1] **Butters**

[2] review these satisfactorily in one hour?

[3] A: Satisfactorily is a relative question.

[4] I don't really know how to answer the question.

[5] Q: Sufficient for purposes of rendering

[6] your opinion?

[7] A: My opinion with respect to what?

[8] Q: You have testified with respect to

[9] Susan Courtney today, haven't you?

[10] A: I am trying to remember what I was

[11] asked about Susan Courtney.

[12] Q: You were asked about the method of

[13] selecting films, weren't you?

[14] A: Yes, I was.

[15] Q: Do you believe your review was such for

[16] purposes of forming that opinion?

[17] A: Yes, I do.

[18] Q: Sir, have you - strike that.

[19] Are there any video rental stores in

[20] Durham, where you live now?

[21] A: Durham, North Carolina, yes, sir.

[22] Q: Are there any video stores there?

[23] A: Yes.

[24] Q: Does the university where you work have

[25] any kind of library?

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[1] **Butters**

[2] A: An extensive library of film.

[3] Q: Have you viewed in their entirety any

[4] of the films that are excerpted on Courtney Exhibit

[5] 3?

[6] A: For purposes of this?

[7] Q: Let's say at any time within the last

[8] year.

[9] A: No.

[10] Q: I believe you testified, sir, that the

[11] Nunberg deposition and Courtney deposition were the

[12] only depositions that you have ever viewed in this

[13] matter; is that correct?

[14] Excuse me, I don't know, did you

[15] testify whether you reviewed Mr. Barnhart's

[16] deposition?

[17] A: I didn't testify about that.

[18] Q: Did you review Mr. Barnhart's

[19] deposition?

[20] A: I am trying to remember. To the best

[21] of my knowledge, no.

[22] Q: You reviewed the Nunberg and Courtney

[23] depositions; is that correct?

[24] A: Yes.

[25] Q: Any other depositions?

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**Butters**

- [1] A: I don't remember now reviewing any  
[2] other depositions.  
[3] Q: Let me ask it more specifically, then.  
[4] You are aware that this particular  
[5] legal action that brings us here today was brought  
[6] by seven individuals?  
[7] A: I have read the petition or the  
[8] complaint, or whatever it is called, approximately a  
[9] year ago, so approximately seven individuals, yes.  
[10] Q: Are you aware that those seven  
[11] individuals have been deposed in this litigation?  
[12] A: Not specifically aware, no.  
[13] Q: So you certainly haven't read any of  
[14] their transcripts; is that correct?  
[15] A: That's correct.  
[16] Q: By the way, when did you receive the  
[17] transcript of the February sessions of the Nunberg  
[18] deposition?  
[19] A: I don't know.  
[20] Q: Do you have any documents with you that  
[21] will assist your memory in that regard?  
[22] A: Let me check and see. I have no  
[23] correspondence. I didn't bring the correspondence,  
[24] if there was any that accompanied - I assume there

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**Butters**

- [1] was correspondence that accompanied this.  
[2] I believe my memory is that Claudia  
[3] Bogdanos sent me this. The transcript is dated  
[4] February 18 and February 19, 1997. So my best  
[5] estimate is this was received sometime in March of  
[6] 1997.  
[7] Q: But you have no specific recollection?  
[8] A: I have no specific recollection.  
[9] Q: When did you receive the transcript of  
[10] Dr. Nunberg's prior deposition, which was taken in  
[11] approximately December 1996?  
[12] A: Again, I have no correspondence that  
[13] tells me when. On December 20, 1996 Jeffrey  
[14] Nunberg's supplemental report was sent to me. I do  
[15] have correspondence about that.  
[16] Q: Did you read his supplemental report on  
[17] or about the date that you received it?  
[18] A: I think so. But the December 17  
[19] deposition could have come to me as late as, I  
[20] suppose as late as early February. I just don't  
[21] remember. It may have been earlier than that. It  
[22] may have been sometime in January.  
[23] Q: You reviewed that at an earlier time,  
[24] though, than you reviewed the last Nunberg

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**Butters**

- [1] transcript; is that correct?  
[2] A: Yes.  
[3] Q: Sir, is it your testimony that in all  
[4] cases the absence of a label in a dictionary  
[5] necessarily means that the editor believed that the  
[6] word had no significant connotations, or at least no  
[7] sufficiently significant connotations to warrant  
[8] flagging those connotations in the dictionary?  
[9] MR. REINER: I object to the question.  
[10] THE WITNESS: Will you repeat the  
[11] question.  
[12] (Record read)  
[13] A: Absent some unusual circumstances, yes.  
[14] "All" is a very difficult word to subscribe to.  
[15] Q: You agree there are circumstances in  
[16] which the absence of a label would not indicate that  
[17] the editor had drawn a specific conclusion; is that  
[18] correct?  
[19] MR. REINER: Objection. Go ahead.  
[20] A: There could be such circumstances. I  
[21] can't - it would be highly unusual circumstances.  
[22] Q: Dr. Butters, you have stated that the  
[23] most resent instance of the word redskins that you  
[24] have seen was in the March 24, 1997 edition of the

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**Butters**

- [1] New Republic; is that correct?  
[2] A: The most recent reference of redskins  
[3] that I have seen in which the term is used  
[4] denotatively for native Americans. And that is most  
[5] recent in terms of the utterance by the utterer, and  
[6] not by the seeing or hearing by me.  
[7] Q: Let me ask that definition of "most  
[8] recent" as simply referring to the date of the  
[9] utterance as opposed to your seeing; is that  
[10] agreeable?  
[11] A: Yes.  
[12] Q: What is the second most recent such  
[13] item that you have seen?  
[14] A: I am trying to - this is a difficult  
[15] question to answer, because there have been a large  
[16] number of such occurrences. The second most recent  
[17] chronological, and not the second most recent one  
[18] that I have heard of. The current proceedings  
[19] excepted, of course, I have seen the term printed in  
[20] transcripts. That sort of thing. I am not prepared  
[21] to answer that question. I haven't given that  
[22] thought.  
[23] Q: What is the most recent instance, again  
[24] using the same most recent, the definition of most



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**Butters**

- [1]  
[2] recent, what is the most recent instance you have  
[3] seen of the word nigger, and again except seeing  
[4] that in deposition transcripts.  
[5] **A:** The most recent occurrence of nigger  
[6] that I recall seeing was in the Duke Chronicle, the  
[7] Duke student newspaper, sometime in March of 1997.  
[8] **Q:** I take it you don't have a copy of that  
[9] particular newspaper with you today?  
[10] **A:** I am afraid I don't have copies of  
[11] anything that I didn't anticipate that you might ask  
[12] me about.  
[13] **Q:** So we cannot, we don't have the  
[14] material itself so as to determine the context in  
[15] which the word was used; is that correct?  
[16] **A:** I would be very happy to give the  
[17] context if you would like.  
[18] **Q:** I will ask you the next question, but  
[19] can you agree we don't have the material here and  
[20] therefore cannot evaluate the material itself today;  
[21] is that correct?  
[22] **We don't have the material here and**  
[23] **therefore cannot look at the primary source at this**  
[24] **moment?**  
[25] **MR. REINER:** For the record, the

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**Butters**

- [1]  
[2] witness was not asked to bring any such  
[3] materials with him as identified either by  
[4] Mr. Lindsay or myself.  
[5] **MR. LINDSAY:** For the record, I have,  
[6] of course have no knowledge of the  
[7] conversations between Mr. Reiner and the  
[8] witness.  
[9] **MR. REINER:** For the record, I did not  
[10] ask him to bring any materials, and I'm not  
[11] aware of any request by Mr. Lindsay.  
[12] **Q:** What was the context, sir?  
[13] **A:** It was a letter to the editor written  
[14] by a Durham student.  
[15] **Q:** Saying?  
[16] **A:** In a very general way the letter  
[17] defended the use of nigger, of the term nigger in  
[18] works of literature, such as Flannery O'Connor's  
[19] short story The Artificial Nigger, which was  
[20] published sometime in the 1950s.  
[21] **Q:** I would like to ask you, you have not  
[22] prepared any kind of report on the actual history of  
[23] the Washington football club's adoption of the word  
[24] redskin or redskins as its name; is that correct?  
[25] **A:** I have not.

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**Butters**

- [1]  
[2] **Q:** Is it your position, sir, that the word  
[3] redskins has no connotations whatsoever?  
[4] **A:** No.  
[5] **Q:** It does have connotations; is that  
[6] correct?  
[7] **A:** Yes.  
[8] **Q:** Setting aside whether you and I can  
[9] agree on what those connotations are, is it your  
[10] position that the connotations of the word redskins  
[11] as used to refer to native Americans, are also  
[12] connotations of the word redskins as used to refer  
[13] to the football team?  
[14] **A:** Please repeat that question,  
[15] (Record read)  
[16] **MR. LINDSAY:** Let me rephrase that. I  
[17] think I might be able to.  
[18] **Q:** Do you agree that prior to the adoption  
[19] of the word redskin or redskins as the team name for  
[20] the Washington football club, that the word redskin  
[21] had connotations?  
[22] **A:** Yes.  
[23] **Q:** Do you agree that those connotations  
[24] became associated with the name, with the word -  
[25] strike that.

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**Butters**

- [1]  
[2] Do you agree that those connotations  
[3] continue to be associated with the word redskins  
[4] when it became adopted by the Washington football  
[5] team?  
[6] **A:** Yes.  
[7] **Q:** Sir, is it your position that there are  
[8] political pressures brought to bear on dictionary  
[9] editors to include labels for words in their  
[10] dictionaries?  
[11] **A:** The word I have used consistently has  
[12] been socio-political pressures, and my answer would  
[13] be yes.  
[14] **Q:** Are you aware of any instance when a  
[15] dictionary editor has, in your judgment,  
[16] inappropriately included a label as to a word as a  
[17] result of these socio-political pressures?  
[18] **A:** Yes.  
[19] **Q:** What instance, sir?  
[20] **A:** The edition of the label derogatory to  
[21] the 1992 American Heritage Dictionary of, the third  
[22] edition of the American Heritage Dictionary.  
[23] **Q:** To what word?  
[24] **A:** To the word redskins.  
[25] **Q:** Is that the only instance?

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[1] **Butters**  
[2] **A:** That's foremost in my mind at the  
[3] present time.  
[4] **Q:** You are not aware of any others?  
[5] **A:** I have not researched that topic.  
[6] **Q:** I would like to return for a moment to  
[7] the topic of films, and I just want to make sure,  
[8] you received Jeffrey Nunberg's disclosure in this  
[9] matter; is that correct?  
[10] **A:** Yes.  
[11] **Q:** That has been previously marked at the  
[12] prior session of your deposition as Exhibit 22; is  
[13] that correct?  
[14] **A:** Yes.  
[15] **Q:** You read - excuse me, when did you  
[16] receive it, approximately?  
[17] **A:** I have no idea.  
[18] **Q:** Approximately when did you read it,  
[19] though?  
[20] **A:** It would have been sometime after June  
[21] 10, 1996.  
[22] **Q:** During the summer of 1996?  
[23] **A:** Yes.  
[24] **Q:** Did you discuss its contents with Mr.  
[25] Reiner?

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[1] **Butters**  
[2] **A:** No.  
[3] **Q:** With anyone else at White & Case?  
[4] **A:** I believe I discussed - my memory is  
[5] that I discussed the contents of this with Ms.  
[6] Flynn.  
[7] **Q:** Was that also in the summer of 1996?  
[8] **A:** To the best of my memory, yes.  
[9] **Q:** I would like to invite your attention  
[10] to page 10 of the report. Do you see that there's a  
[11] reference in that page 10 of Exhibit 22 to the film  
[12] Northwest Passage?  
[13] **A:** Yes, I do.  
[14] **Q:** After you read the report - excuse me,  
[15] Exhibit 22, did you go out and view the movie  
[16] Northwest Passage?  
[17] **A:** No, I did not.  
[18] **Q:** Did you ask anyone to view it for you?  
[19] **A:** No, certainly not.  
[20] **Q:** On page 11 do you see there's a  
[21] reference to the movie Broken Arrow?  
[22] **A:** Yes.  
[23] **Q:** After you read the report, did you go  
[24] out and view the movie Broken Arrow?  
[25] **A:** Certainly not.

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[1] **Butters**  
[2] **Q:** Did you ask anyone to view it for you?  
[3] **A:** Certainly not.  
[4] **Q:** Do you see there's a reference on that  
[5] same page to Commacheros?  
[6] **A:** Yes.  
[7] **Q:** After you read the report, did you view  
[8] the movie Commacheros?  
[9] **A:** No.  
[10] **Q:** Did you ask anyone to view it for you?  
[11] **A:** Certainly not.  
[12] **Q:** We will continue on to page 12 of the  
[13] report.  
[14] Do you see towards the bottom of that  
[15] there's a reference to the movie Tell Them Willy Boy  
[16] Was Here?  
[17] **A:** Yes.  
[18] **Q:** After reading the report, did you view  
[19] the movie Tell Them Willy Boy Was Here?  
[20] **A:** No.  
[21] **Q:** Did you ask anyone to view it for you?  
[22] **A:** Certainly not.  
[23] **Q:** I take it, sir, that it's true that  
[24] after you reviewed the December 1996 Nunberg  
[25] deposition, that you again did not view any movies

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[1] **Butters**  
[2] specifically for purposes of this case; is that  
[3] correct?  
[4] **A:** Specifically for purposes of this case?  
[5] I did not view any movies.  
[6] **Q:** So if there were any movies identified  
[7] in that deposition session, you did not go out and  
[8] view them; is that correct?  
[9] **A:** That's correct.  
[10] **Q:** You didn't ask anyone else to view them  
[11] for you?  
[12] **A:** Certainly not.  
[13] **Q:** At that time you didn't ask anyone to  
[14] locate any other films for you in connection with  
[15] this case; is that correct?  
[16] **A:** I attempted to locate the 1929 silent  
[17] film Redskins.  
[18] **Q:** Were you able to locate it?  
[19] **A:** I was able to locate it, plus a  
[20] synopsis, a novel upon which the movie was based on,  
[21] upon which it was based on the movie, it's not quite  
[22] clear, and stills from the film within it.  
[23] And I did read that novel, but the  
[24] movie itself I did not go to the Library of Congress  
[25] to view.

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**Butters**

- [1]  
[2] Q: With respect to the film clip from  
[3] *Courage Under Fire* - first of all, have you ever  
[4] seen the movie in its entirety, *Courage Under Fire*?  
[5] A: No, I have not.  
[6] Q: I take it, then, that you yourself did  
[7] not prepare this film clip that was marked as  
[8] Exhibit 29?  
[9] A: No.  
[10] Q: You did not select the film from which  
[11] the clip would be taken?  
[12] A: No.  
[13] Q: You did not select the particular clip  
[14] that is included within the tape?  
[15] A: That is correct.  
[16] Q: Indeed, you did not - when did you  
[17] first see the clip?  
[18] A: Yesterday afternoon.  
[19] Q: With respect to the films that you  
[20] identified - excuse me. Strike that.  
[21] I believe you testified with respect to  
[22] Ms. Courtney, that you were - excuse me, but with  
[23] respect to Ms. Courtney's selection of films, you  
[24] believed her initial search for films was largely in  
[25] western films, and you thought that was

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**Butters**

- [1] inappropriate; is that correct?  
[2] A: I can't remember my exact testimony of  
[3] course, but that I would agree approximately with  
[4] that sense, yes.  
[5] Q: Your sense of that - excuse me, your  
[6] reason for that was that in western films one might  
[7] expect to find a high level of concentration; is  
[8] that correct?  
[9] A: Yes.  
[10] Q: Therefore, one might expect to hear the  
[11] word *redskins* uttered in anger; is that correct?  
[12] A: Yes.  
[13] Q: One might also expect to find in such  
[14] films the word *Indian* uttered?  
[15] A: Yes.  
[16] Q: You have not selected any film clips to  
[17] show us the word *Indian* being uttered in anger in  
[18] such films?  
[19] A: The word *Indian* is.  
[20] MR. REINER: May I have the question?  
[21] I'm sorry.  
[22] Q: Let me rephrase it.  
[23] You have not presented us with any film  
[24] clips showing examples of the word *Indian* being  
[25]

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**Butters**

- [1] uttered in western films; is that correct?  
[2] A: That's correct.  
[3] Q: Now, with respect to - I believe you  
[4] stated that there were three instances of films that  
[5] Ms. Courtney and Dr. Nunberg excluded from their  
[6] videotape.  
[7] Do you generally recall that testimony?  
[8] A: Yes.  
[9] Q: What is your understanding of why those  
[10] three instances were not included in the videotape?  
[11] A: My recollection of her testimony is  
[12] that she says that they were too long to add to an  
[13] eleven-minute tape.  
[14] Q: You agreed that sometimes one has to  
[15] make decisions based upon the amount of time  
[16] available.  
[17] MR. REINER: Objection.  
[18] A: In this life, yes, in research, it  
[19] might be another matter.  
[20] Q: Sir, are you saying that you have had  
[21] enough time to complete the research in this matter?  
[22] A: No. I am saying I don't understand why  
[23] time was a factor in an eleven-minute tape that  
[24] three items were not included. It seems to be a  
[25]

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**Butters**

- [1] professionally questionable decision.  
[2] Q: Sir, you agree that the three instances  
[3] were identified in the Courtney deposition, were  
[4] they not?  
[5] A: Yes.  
[6] Q: Did you go to those films?  
[7] A: I saw the clip yesterday.  
[8] Q: Excuse me, the three films that were  
[9] not included in the clip, did you go to view any of  
[10] those films?  
[11] A: No.  
[12] Q: So as you sit here today, you have no  
[13] basis, one way or another, to determine whether  
[14] those clips would add or detract from the film clip;  
[15] is that correct?  
[16] A: That's correct.  
[17] Q: Now, let me invite your attention,  
[18] while we are on the topic of films, to Butters  
[19] Exhibit 24.  
[20] A: Yes.  
[21] Q: Specifically at page 4, the paragraph  
[22] that is numbered 1.3.  
[23] A: Yes.  
[24] Q: The second sentence of this paragraph,  
[25]

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**Butters**

[1]  
[2] which concerns movies, reads as follows: "It  
[3] appears Dr. Nunberg's testimony with respect to the  
[4] movies is precisely the opposite. He draws  
[5] conclusions, but presents no evidence," closed  
[6] quote.  
[7] Do you see that?  
[8] A: Yes.  
[9] Q: At the time that you wrote this report,  
[10] you had not viewed Courtney Exhibit 3; is that  
[11] correct?  
[12] A: Right.  
[13] Q: At the time that Dr. Nunberg gave his  
[14] testimony he had viewed Courtney Exhibit 3, had he  
[15] not?  
[16] A: That is his testimony.  
[17] Q: Do you have any reason to doubt that?  
[18] A: No, I do not.  
[19] Q: You have also testified with respect to  
[20] Ivan Ross, and you have commented on Ivan Ross'  
[21] survey.  
[22] I believe one of your criticisms was  
[23] that as to the questionnaire itself, the  
[24] questionnaire didn't ask the survey respondents  
[25] whether the word redskins was scandalous, closed

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**Butters**

[1] quote.  
[2] A: Yes.  
[3] Q: Do you believe it inappropriate for  
[4] a - strike that.  
[5] You believe that the question should  
[6] have been phrased as asking the survey respondents  
[7] whether the word redskins was scandalous, quote,  
[8] unquote; is that correct?  
[9] A: Yes.  
[10] Q: And that it would be inappropriate,  
[11] excuse me, you believe it was inappropriate of Dr.  
[12] Ross to ask the question otherwise, correct?  
[13] A: Given his research goals, yes.  
[14] Q: So it would be inappropriate for an  
[15] expert to conclude that scandalous should not be  
[16] included in the questionnaire, correct?  
[17] A: I'm sorry, I don't understand the  
[18] question.  
[19] Q: Let me rephrase.  
[20] What you are saying is you believe an  
[21] expert in surveys would have included the word  
[22] scandalous if his survey objectives were the  
[23] objectives that Dr. Ross had; is that correct?  
[24] A: I believe he ought to have done.

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**Butters**

[1]  
[2] Q: Let us turn back to Butters Exhibit 24.  
[3] Do you still have that before you?  
[4] A: Yes, sir.  
[5] Q: Now, at page 2 in the paragraph that is  
[6] numbered 1.1.C. The end of the first paragraph of  
[7] that session reads "Likewise," quote, "Likewise, one  
[8] could legitimately say that lawyer," and that word  
[9] is underscored, "is a word that is not in such good  
[10] repute," single quote, "as attorney," closed quote.  
[11] Do you see that sentence?  
[12] A: Yes, sir.  
[13] Q: Have you found any instances of a  
[14] dictionary or encyclopedia stating that the word is  
[15] not in such good repute as attorney?  
[16] A: Have I found any dictionaries?  
[17] Q: Or encyclopedias.  
[18] A: No.  
[19] Q: Sir, let's talk for a moment about your  
[20] views as to the meaning of the word disparaging.  
[21] Is it your testimony that disparaging  
[22] means - excuse me, includes an intent to belittle  
[23] or to demean?  
[24] A: That is correct.  
[25] Q: So there's some intentionality involved

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**Butters**

[1] in the word disparaging?  
[2] A: Yes.  
[3] Q: And that refers to the intention of the  
[4] speaker?  
[5] A: Yes.  
[6] Q: You also testify, sir, that the word  
[7] nigger is a disparaging word; is that correct?  
[8] A: Yes.  
[9] Q: The word nigger itself has no  
[10] intentions, correct?  
[11] A: The word itself has no intentions.  
[12] Q: The word nigger is not a sentient  
[13] being; is that correct?  
[14] A: Correct.  
[15] Q: The word itself has no ability to form  
[16] any intentions; is that correct?  
[17] A: Of course.  
[18] Q: Yet you say that the word itself is  
[19] disparaging; is that correct?  
[20] A: The word nigger is a disparaging word  
[21] in the English language, yes.  
[22] Q: You believe it is sensible to call a  
[23] word disparaging because you have examined the  
[24] circumstances in which the word is used; is that

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**Butters**

- [1]  
[2] correct?  
[3] A: For a lexicographer to attach a usage  
[4] label to a word would require the examination of the  
[5] context in which the word is used, yes; this is  
[6] normal lexicographical procedure.  
[7] Q: Because a word is used in a particular  
[8] way, that one is able to form an opinion one way or  
[9] another as to whether a particular word is  
[10] disparaging; is that correct?  
[11] A: When placing a usage label in the  
[12] dictionary, yes.  
[13] Q: Some of those instances of usage may be  
[14] in films; is that correct?  
[15] A: Film would be one of the sources of  
[16] usage that a lexicographer, one of the sources of  
[17] usages that a lexicographer could go to, yes, sir.  
[18] Q: You did not, in preparing your initial  
[19] report in this matter, however, turn to films as one  
[20] of your source materials, did you?  
[21] A: No, I did not.  
[22] Q: You also testified, sir, and we are  
[23] still in Butters Exhibit 24, at pages 7 and 8, in  
[24] the paragraph that is numbered 1.5. I place before  
[25] you for purposes of refreshing your recollection as

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**Butters**

- [1] to your testimony, is it your view that team names  
[2] never have connotations of violence?  
[3] A: My testimony was that connotations of  
[4] violence are not the reason for team names.  
[5] Q: Is it your view that team names never  
[6] have connotations of violence?  
[7] MR. REINER: I object to the question.  
[8] A: Again, "never," like "all," is a very  
[9] powerful word, and I am not qualified, I'm not -  
[10] excuse me. I am not prepared to testify that team  
[11] names might never have connotations of violence.  
[12] Q: Is it your testimony that team names  
[13] never have connotations of savagery?  
[14] MR. REINER: I object to the question.  
[15] A: Savagery is really not a, it's too  
[16] vague and not technical a term for me to be able to  
[17] answer that question.  
[18] Q: What does the word disingenuous mean?  
[19] A: Disingenuous?  
[20] Q: Yes, sir.  
[21] MR. REINER: Objection.  
[22] A: Disingenuous means not being thoroughly  
[23] forthright.  
[24] Q: Not being completely honest; is that

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**Butters**

- [1]  
[2] correct?  
[3] MR. REINER: Objection. That's not  
[4] what the witness said.  
[5] A: I prefer forthright.  
[6] Q: Do you agree that it's not  
[7] complimentary to call someone disingenuous?  
[8] MR. REINER: Objection.  
[9] A: It depends on the context.  
[10] Q: There are contexts in which someone  
[11] would be flattered by being called disingenuous?  
[12] A: If it was seen as a clever move.  
[13] Q: I gather you are familiar with the  
[14] scientific method; is that correct?  
[15] MR. REINER: Objection.  
[16] A: Yes.  
[17] Q: Is the form of art - excuse me, you  
[18] have also heard of a form of art called an ad  
[19] hominem attack as a component of the scientific  
[20] method?  
[21] MR. REINER: Objection.  
[22] I don't know what you mean by ad  
[23] hominem attack.  
[24] A: The scientific method does not involve  
[25] attacks of any kind. It's a methodological

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**Butters**

- [1] procedure matter, and ad hominem attack is strategy,  
[2] and you are comparing apples and oranges there.  
[3] Q: So you agree, then, that an ad hominem  
[4] attack is not a component of the scientific method;  
[5] is that correct?  
[6] MR. REINER: Objection. What is meant  
[7] by an ad hominem attack?  
[8] Q: Are you capable of answering the  
[9] question, sir?  
[10] A: My answer is yes, it is not a component  
[11] of the scientific method.  
[12] MR. LINDSAY: I have nothing further.  
[13] BY MR. REINER:  
[14] Q: Is it an ad hominem attack to criticize  
[15] the work of another researcher?  
[16] MR. LINDSAY: Objection.  
[17] A: Not per se.  
[18] Q: Is it an ad hominem attack to comment  
[19] upon the scientific basis upon which another  
[20] researcher draws conclusions?  
[21] A: Certainly not.  
[22] Q: You were asked questions about the use  
[23] of encyclopedias in dictionaries for purposes of  
[24] drawing distinctions between lawyers and attorneys;  
[25]

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[1] **Butters**  
[2] is that correct?  
[3] **A:** I was asked such a question.  
[4] **Q:** As a linguist, are you limited to the  
[5] use of encyclopedias and dictionaries?  
[6] **A:** No.  
[7] **Q:** Do you have multiple sources, as a  
[8] linguist, to draw conclusions as to the meaning and  
[9] uses of words?  
[10] **A:** Yes.  
[11] **Q:** Did you use more than just the  
[12] references to encyclopedias and dictionaries to draw  
[13] conclusions as to the distinction between lawyers  
[14] and attorneys, the use of the words lawyers and  
[15] attorneys?  
[16] **A:** Yes.  
[17] **Q:** What were they?  
[18] **MR. LINDSAY:** Objection.  
[19] **A:** They have included commentary that had  
[20] been made in previous depositions. They include my  
[21] general knowledge of the English language, who is a  
[22] specialist in the English language and is alert to  
[23] such nuances.  
[24] **Q:** With respect to Professor Nunberg's  
[25] testimony concerning the films that were used as

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[1] **Butters**  
[2] part of his research, within his testimony did you  
[3] ascertain any specific description of what elements  
[4] of the films he found to be indicative of the  
[5] conclusions he drew?  
[6] **MR. LINDSAY:** Objection.  
[7] **A:** Not beyond the quotations from time to  
[8] time, of sentences in which the word redskins  
[9] appeared.  
[10] **Q:** As far as the discipline and science of  
[11] linguistics, is it appropriate merely to - strike  
[12] that.  
[13] Within the scientific basis of  
[14] linguistics, does one merely make quotations without  
[15] consideration of the totality of the reference in  
[16] which the quotation is used?  
[17] **MR. LINDSAY:** Objection.  
[18] **Q:** In a film, of course.  
[19] **MR. LINDSAY:** Objection.  
[20] **A:** Does one draw conclusions from  
[21] sentences in isolation from the context?  
[22] **Q:** Yes.  
[23] **A:** In general, no.  
[24] **Q:** With respect to films that were not  
[25] included in this eleven-minute excerpt which you saw

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[1] **Butters**  
[2] yesterday afternoon, is it accepted scientific  
[3] procedure within the discipline of linguistics to  
[4] delete research data that may have a bearing upon  
[5] the subject of the research for the purpose of  
[6] convenience in time or space?  
[7] **MR. LINDSAY:** Objection,  
[8] argumentative, and facts not in evidence.  
[9] And indeed contrary to the testimony that has  
[10] been presented.  
[11] **A:** Would you repeat the question?  
[12] **Q:** Let me give you a new question.  
[13] In terms of collection of data for  
[14] linguistic purposes, is it within the discipline of  
[15] the science to not include data assembled for  
[16] purposes of drawing conclusions?  
[17] **MR. LINDSAY:** Objection.  
[18] **A:** To exclude data gratuitously is  
[19] certainly subject to question, doubt.  
[20] **MR. REINER:** I have no further  
[21] questions.  
[22] **BY MR. LINDSAY:**  
[23] **Q:** Dr. Butters, does your report include  
[24] every single instance of the word redskins that you  
[25] encountered in your researches?

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[1] **Butters**  
[2] **MR. REINER:** Objection.  
[3] **A:** Does my report?  
[4] **Q:** Yes, sir.  
[5] **A:** No.  
[6] **Q:** So indeed your report has excluded  
[7] instances of redskins that you found in your  
[8] research; is that correct?  
[9] **A:** I have made available every instance of  
[10] redskins that I have found in my research, and they  
[11] are all entered into as documents.  
[12] **Q:** They are not included in your report;  
[13] is that correct?  
[14] **A:** They are not included in the report.  
[15] **Q:** Is it your testimony that is  
[16] nonetheless an appropriate manner of presenting a  
[17] report?  
[18] (Continued on the next page to include  
[19] the jurat.)  
[20]  
[21]  
[22]  
[23]  
[24]  
[25]

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**Min-U-Script®**

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